## **Table of Contents**

11-40-101. Short title	5
11-40-102. Definitions	5
11-40-103. Savings and loan association defined	6
11-40-104. Fiscal year - closing dates - net earnings	6
11-40-105. File annual reports	7
11-40-106. Annual fees and assessments - fund	7
11-40-106.5. Preauthorized transfers - savings and loan association must have written authorization (Repealed)	
11-40-107. Defamation of associations - penalty	8
11-40-108. Circulating false information - penalty	8
11-40-109. Suits interfering with business of association	9
11-41-101. General organization	9
11-41-102. Restriction on corporate name	9
11-41-103. Use of name "savings and loan association" restricted	9
11-41-104. Articles of incorporation	10
11-41-105. Minimum stock subscription - issuance of preferred stock	10
11-41-106. Approval of articles of incorporation	10
11-41-107. Documents deposited with commissioner	11
11-41-108. Refusal of certificate - appeal	11
11-41-109. Certificate of approval - where articles filed	11
11-41-110. Body corporate	12
11-41-111. Renewal of corporate life	12
11-41-112. Powers of savings and loan associations	13
11-41-113. Federal home loan bank membership	14
11-41-114. How funds invested	15
11-41-115. Interest rates on loans	16
11-41-116. Where associations may operate	17
11-41-117. Insurance of shares	17
11-41-117.5. Insurance of obligations	17

11-41-118. Loans - investment in notes or bonds	18
11-41-119. Loans to members and other loans	18
11-41-119.5. Reporting of loans. (Repealed)	20
11-41-120. Branches. (Repealed)	20
11-41-121. Merger, consolidation, and transfer	20
11-41-122. Membership fees	22
11-41-123. Directors and meetings	23
11-41-124. Officers or directors to receive no commission	23
11-41-125. Loans to officers and directors	23
11-41-126. Bonds of officers	24
11-41-127. Violations - penalties	24
11-41-128. Acknowledgments	24
11-41-129. Amendment of articles of incorporation	24
11-41-130. Reorganization	25
11-41-130.5. Cessation of business as an association - amendment of articles	26
11-41-131. Dissolution	26
11-41-132. Escheat proceedings	27
11-41-133. Acquisition of majority control over an existing association - definitions	27
11-41-134. Indemnification and personal liability of directors, officers, employees, and agents - legislative declaration	29
11-42-101. Investment and savings shares	29
11-42-102. Preliminary requirements	30
11-42-103. Contents of certificate - accounts	30
11-42-104. Participating and limited dividend shares	30
11-42-105. Responsibility for losses - extent	30
11-42-106. Transfer of shares	31
11-42-107. Permanent stock	31
11-42-108. Assessment to restore impaired permanent stock	31
11-42-109. Sale of delinquent stock	32
11-42-110. Forfeiture of delinquent stock	32
11-42-111. Reserves and distribution of earnings	33

11-42-112. Requirements for sale of permanent stock	34
11-42-113. Redemption of shares or stock	34
11-42-114. Bonus plan	34
11-42-115. Power to issue shares to minors or in trust	34
11-42-116. Joint accounts	35
11-42-117. Notice of intention to withdraw	35
11-42-118. Form of notice	35
11-42-119. Filing of notice	35
11-42-120. Shares or account not withdrawable	36
11-42-121. Payment of withdrawals	36
11-42-122. Limitation on withdrawals	36
11-42-123. Matured shares	37
11-42-124. Applicable to previously issued certificates	37
11-42-125. Associations authorized to accept deposit accounts	37
11-43-101. Restrictions on foreign associations	38
11-44-101. Division of financial services created	39
11-44-101.4. Definitions	39
11-44-101.5. Division subject to termination - repeal of article	40
11-44-101.6. Financial services board - creation	40
11-44-107. Confidentiality	41
11-44-101.8. Review of commissioner actions by financial services board - judicial review	43
11-44-102. Commissioner - duties - employees	43
11-44-103. Powers of commissioner	44
11-44-103.5. Record retention by the commissioner	45
11-44-104. Commissioner may delegate powers	45
11-44-105. Commissioner may institute suits	45
11-44-106. Issuance of subpoenas	45
11-44-106.5. Suspension or removal of directors, officers, or employees	46
11-44-107. Confidentiality	47
11-44-108. Seal of commissioner (Repealed)	47
11-44-109. Examination by commissioner - procedure - penalty	48

11-44-110. Power to take possession of association	49
11-44-110.5. Supervisory mergers	50
11-44-111. Appeal from commissioner's action	51
11-44-112. Appointment of commissioner as receiver - assignment for benefit of creditors prohibite	ed . 51
11-44-113. Procedure under court order	51
11-44-114. Noncompliance with orders - penalty	52
11-44-115. Officers to furnish schedule of property	52
11-44-116. Liquidation powers of commissioner	53
11-44-117. Setoffs	54
11-44-118. Commissioner and deputy not to accept gifts	54
11-44-119. Association's right to resort to court	55
11-44-120. Records of commissioner	55
11-44-121. Commissioner may destroy records. (Repealed)	55
11-44-122. Waiver of membership or stockholder voting	55
11-44-123 (2013)	5e

### 11-40-101. Short title

Articles 40 to 46 of this title shall be known and may be cited as the "Savings and Loan Association Law".

HISTORY: Source: L. 33: p. 284, § 1.CSA: C. 25, § 1.L. 51: p. 212, § 1.CRS 53: § 122-1-1. C.R.S. 1963: § 122-1-1.

Cross references: For provisions regarding funeral contract trust funds, see article 15 of title 10; for provisions regarding the "Money Transmitters Act", see article 52 of title 12; for the "Unclaimed Property Act", see article 13 of title 38.

Cross references: For the "Unclaimed Property Act", see article 13 of title 38.

Law reviews: For article, "Arbitrating Lender Liability Claims", see 18 Colo. Law. 879 (1989).

Cross references: For additional provisions relating to savings and loan associations, see articles 47 and 48 of this title.

### 11-40-102. Definitions

As used in articles 40 to 46 of this title, unless the context otherwise requires:

- (1) "Branch" means any office or other place of business in this state operated by an association other than its principal office in this state where subscriptions are sold, taken, or solicited for shares or stock.
- (2) "Certificate value" means the aggregate of payments by a certificate holder on shares evidenced by such certificate, plus dividends credited thereto, less withdrawals thereon.
- (3) "Commissioner" means the state commissioner of financial services.
- (4) "Division" means the division of financial services.
- (5) "Domestic savings and loan association" is one organized under the laws of Colorado and complying with the provisions thereof.
- (6) "Dues" means the periodic payments made or to be made by a member in the purchase of savings shares.
- (7) "Federal savings and loan association" means one organized or chartered under the "Home Owners' Loan Act of 1933", as may from time to time be amended, or under any federal act which may be enacted as a successor act to regulate the organization and operation of associations formerly organized or chartered under said "Home Owners' Loan Act of 1933". Federal savings and loan associations shall not be subject to the provisions of articles 40 to 46 of this title.
- (8) "Foreign savings and loan association" means an association or a holding company of an association which is organized under the laws of any other state or nation, except federal savings and loan associations which are organized under the "Home Owners' Loan Act of 1933", and any amendments thereto.
- (9) "Free share" means a share not pledged to the association by which issued as collateral security for the repayment of a loan to the owning member.
- (10) "Invested capital" means the aggregate of all certificate values, plus the aggregate par value of all permanent stock issued and paid for, if a permanent stock association.
- (11) "Loan share" means a share which has been pledged to the association by which issued as collateral security for the repayment of a loan to the owning member.
- (12) "Member" means any person owning or having control of an account with an association evidenced by certificate or passbook or any person borrowing from or assuming a loan held by an association or obligated upon a loan held by an association through purchase or otherwise, or a purchaser of property securing a loan held by an association, or a purchaser of property on a contract from an association.
- (12.5) "Net worth" includes the sum of all reserve accounts, undivided profits, permanent stock, preferred stock, and surplus, the principal amount of any subordinated debt securities, and any other account or item included as net worth by regulation of the

commissioner or by any law, rule, regulation, order, or decision of the federal deposit insurance corporation or its successor or any other state or federal agency that is applicable to federal savings and loan associations.

- (13) "Permanent stock" means stock which cannot be withdrawn or the value paid to the holder thereof until all liabilities of the association have been fully liquidated and paid.
- (14) "Share" means a unit having a par value of one hundred dollars evidenced by issued certificate, the certificate value of which represents the proportionate interest of a holder in the association.
- (15) "Shareholder" means the holder of shares which may be withdrawn upon due and proper notice in accordance with the bylaws or as the laws of the state may provide and the withdrawal or payment of which is not contingent upon the payment of all liabilities of the association.
- (16) "Stockholder" means a holder of permanent stock.
- (17) "Subordinated debt security" means any note, secured or otherwise, debenture, or other debt security issued by a savings and loan association which is subordinated or junior, on liquidation or otherwise, to any liability or claim of any order or rank, including all claims having the same priority as or a higher priority than savings account holders.
- (18) "Tax and loan account" means an account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of federal taxes and certain United States' obligations. Tax and loan accounts are not shares, savings or share accounts, savings deposits, or deposit accounts.

**HISTORY:** Source: L. 33: p. 285, § 3.CSA: C. 25, § 3.L. 39: pp. 237, 238, § § 1-4.CRS 53: § 122-1-3.L. 55: p. 756, § 1. C.R.S. 1963: § 122-1-3.L. 69: p. 1013, § 2.L. 77: (12.5) and (17) added, p. 569, § 1, effective July 1.L. 79: (18) added, p. 430, § 1, effective June 19.L. 88: (8) amended, p. 461, § 5, effective July 1.L. 89: (3) and (4) amended, p. 618, § 7, effective July 1.L. 2004: (12.5) amended, p. 148, § 53, effective July 1.

Cross references: For the "Home Owners' Loan Act of 1933", see Pub.L. 73-42, codified at 12 U.S.C. sec. 1461 et seq.

#### ANNOTATION

Law reviews. For article, "Foreign Savings and Loan Associations Not Doing Business in Colorado", see 16 Colo. Law. 43 (1987).

## 11-40-103. Savings and loan association defined

A "savings and loan association", within the meaning of articles 40 to 46 of this title, is any domestic or foreign association or corporation formed, created, or organized to carry on the business of a savings and loan association, which is formed to encourage industry, thrift, home building, and saving among its members, by the accumulation of funds through the issuance and sale of its own shares, capital notes, or debentures, the acceptance of savings deposits, or any other manner permitted by the provisions of articles 40 to 46 of this title, the loaning or investment of the funds so accumulated to assist its members in acquiring real estate, in making improvements thereon, and in paying off existing encumbrances thereon, or for any other purposes or in any other manner permitted by the provisions of articles 40 to 46 of this title, and which accumulates funds to be returned to its members.

HISTORY: Source: L. 33: p. 284, § 2.CSA: C. 25, § 2.CRS 53: § 122-1-2. C.R.S. 1963: § 122-1-2.L. 69: p. 1013, § 1.

#### ANNOTATION

For a business with characteristics of a savings and loan association, see People ex rel. Griffith v. Standard Home Co., 59 Colo. 355, 148 P. 869 (1915).

## 11-40-104. Fiscal year - closing dates - net earnings

(1) Each domestic savings and loan association shall have such fiscal year as may be fixed from time to time by resolution of its board of directors, but the fiscal years of all such associations shall be fixed so as to end as of the last day of a calendar month. Every domestic savings and loan association shall close its books at least once annually as of the close of business on the last day

of its fiscal year and may close its books at such other time as may be fixed by resolution of its board of directors. Any reference in this section or elsewhere in articles 40 to 46 of this title to the closing date of an association means the date fixed for the closing of its books as provided in this section. The books and records of every association shall reflect all the accrued liabilities on the above dates

- (2) The net earnings of each period ending on a closing date fixed as provided in this section shall be determined by deducting from gross income of such periods operating and nonoperating expenses and dividends and interest paid to shareholders or depositors. Expenses shall include:
- (a) Charges for estimated depreciation and obsolescence of home office building and furniture and fixtures, with contra credits to a depreciation reserve account;
- (b) Charges for all losses actually sustained during such periods from the sale of securities, real estate, or other assets or such portion of such losses as have not been charged to reserves pursuant to the provisions of section 11-42-111.
- (3) The remaining balance of gross income thus arrived at is the association's net income and shall be available for dividends on permanent stock or be credited to general reserve accounts or the undivided profits account in a manner as provided in section 11-42-111. Provision may be made for an undivided profits account not to exceed five percent of invested capital, unless an excess amount is approved by the commissioner.
- (4) No income shall be considered as earned until collected; except that interest due and unpaid may be accrued for a period of not more than six months and considered as earnings.

**HISTORY:** Source: L. 33: p. 356, § 12.CSA: C. 25, § 80.CRS 53: § 122-1-4.L. 55: p. 756, § 2. C.R.S. 1963: § 122-1-4.L. 69: p. 1014, § 3.L. 73: p. 1236, § § 1, 2.

## 11-40-105. File annual reports

- (1) On or before February 1 in each year, every association shall make an annual written report to the commissioner, in a form to be prescribed by the commissioner, of its affairs and operations for the twelve months ending on December 31 of the previous year.
- (2) If any association fails to file such report or if any such report is delayed or withheld beyond the day when the report should be so filed, such association shall forfeit and pay the sum of ten dollars for every day such report is withheld or delayed or not completed, and any member of any association or any party in interest may maintain an action in his or her own name to receive such penalty, and the penalty shall be paid to the state treasurer.
- (3) (a) Every association, on or before the first day of the third calendar month after the end of its fiscal year, shall mail to each member or may, at its option, publish in a newspaper of general circulation a report in a form prescribed or approved by the commissioner of its financial condition, setting forth a statement of its assets, liabilities, and reserves in the form of a statement of condition.
- (b) Paragraph (a) of this subsection (3) shall take effect July 1, 1973, and shall apply to loans or contracts for loans entered into on or after that date. Nothing in this subsection (3) shall be deemed to affect loans or contracts for loans entered into prior to July 1, 1973

**HISTORY:** Source: L. 33: p. 355, § 11.CSA: C. 25, § 79.L. 39: p. 252, § 27.CRS 53: § 122-1-5. C.R.S. 1963: § 122-1-5.L. 67: p. 259, § § 1, 2.L. 73: p. 1236, § 3.L. 2000: (1) and (2) amended, p. 155, § 2, effective August 2.

### 11-40-106. Annual fees and assessments - fund

- (1) Every domestic savings and loan association operating in this state shall pay to the division of financial services such fees for administration, supervision, and examination as the commissioner may determine sufficient to meet the budget of the division of financial services as appropriated by the general assembly for the fiscal year commencing July 1. The fees shall be determined as follows:
- (a) At least semiannually, the commissioner shall assess each association, based on its total assets, to meet the costs of

administration, examination, and supervision by the division for that fiscal year. Such assessments shall be calculated in terms of cents per thousand dollars of total assets but shall in no case exceed in total the costs of administration, examination, and supervision by the division for that fiscal year. The assessment calculation or ratio of the assessment charged to total assets shall be alike in all cases. On or before the dates specified by the commissioner, each association shall pay its assessment.

- (b) As of July 1 of each year, the commissioner may estimate a per diem rate to be charged for the examination of each association during the fiscal year. At the conclusion of its examination, each association shall pay the actual cost of the examination, if required by the commissioner.
- (c) At least semiannually, the commissioner shall assess each state and federal savings and loan association that has been designated as an eligible public depository, as defined in section 11-47-103 (6), based on its total public deposits held, to meet its share of the division's supervisory costs of monitoring compliance with the provisions of the "Savings and Loan Association Public Deposit Protection Act", article 47 of this title, for that fiscal year. Such assessments shall be calculated in terms of cents per thousand dollars of total public deposits held. The assessment calculation, or ratio of the assessment charged to total public deposits held, shall be alike in all cases. On or before the dates specified by the commissioner, each association shall pay its assessment.
- (d) In the same manner as specified in paragraph (b) of this subsection (1), the commissioner may charge any state or federal savings and loan association that has been designated as an eligible public depository, as defined in section 11-47-103 (6), for the actual cost of any examination necessary to assure its compliance with article 47 of this title.
- (2) All fees and collections of every kind shall be transmitted to the state treasurer, who shall credit the same to the division of financial services cash fund, which fund is hereby created in the state treasury. All moneys in the fund shall be subject to appropriation by the general assembly for the direct and indirect costs of the activities of the division of financial services. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

HISTORY: Source: L. 33: p. 352, § 4.CSA: C. 25, § 72.L. 39: p. 252, § 25.L. 45: p. 240, § 3.L. 47: p. 317, § 2.CRS 53: § 122-1-6. C.R.S. 1963: § 122-1-6.L. 67: p. 892, § 1.L. 81: (1) amended, p. 619, § 1, effective April 30.L. 83: (1)(c) added, p. 487, § 1, effective May 10.L. 84: (1)(d) added, p. 377, § 1, effective May 11.L. 88: IP(1) and (1)(a) amended, p. 455, § 1, effective March 18.L. 89: IP(1) amended, p. 618, § 8, effective July 1.L. 92: (1)(a) and (2) amended, p. 928, § 6, effective February 25.L. 2004: (1)(a)(II) and (1)(a)(III) amended, p. 135, § 12, effective July 1.L. 2005: (1) amended, p. 14, § 1, effective February 23.

# 11-40-106.5. Preauthorized transfers - savings and loan association must have written authorization. (Repealed)

HISTORY: Source: L. 88: Entire section added, p. 346, § 10, effective July 1.L. 89: Entire section repealed, p. 592, § 1, effective April 7.

## 11-40-107. Defamation of associations - penalty

Any person who willfully makes, circulates, or transmits any false statement, rumor, report, or suggestion, written, printed, or spoken, concerning the financial condition or management or assets of any savings and loan association, either by name or as a particular group of any particular city, town, or county, which incites the public or any person or creates an impression detrimental to the standing, solvency, or responsibility of said savings and loan association, or which tends to result or results in the withdrawal of funds from such association or in the exchange of shares in savings and loan associations for any other stock, bonds, notes, debentures, or other evidences of indebtedness or for any other property of any kind or character whatsoever, or which tends to results in impairing the confidence which may be reposed in said association and any person aiding, advising, and abetting such person in such matters and things is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than three months nor more than one year, or by both such fine and imprisonment.

HISTORY: Source: L. 33: p. 352, § 3.CSA: C. 25, § 71.CRS 53: § 122-1-7. C.R.S. 1963: § 122-1-7.

## 11-40-108. Circulating false information - penalty

Any person who willfully and knowingly concurs in or is responsible, directly or indirectly, for the making, publishing, or posting, either generally or privately, to actual or prospective members or investors of any false or misleading information tending to imply that any other business operated in this state is a savings and loan association or operated in the manner of a savings and loan

association or is regulated in whole or in part under the provisions of articles 40 to 46 of this title is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars, or by imprisonment in the county jail for a period of not less than six months nor more than one year, or by both such fine and imprisonment.

HISTORY: Source: L. 33: p. 359, § 17.CSA: C. 25, § 85.CRS 53: § 122-1-8.L. 63: p. 292, § 12. C.R.S. 1963: § 122-1-8.

## 11-40-109. Suits interfering with business of association

No order, judgment, or decree providing for an accounting of, or enjoining, restraining, or interfering with the transaction of, the business of any savings and loan association organized or doing business under the provisions of articles 40 to 46 of this title shall be made or granted otherwise than upon the application of the attorney general, after his approval of a written request therefor by the commissioner, except in an action by a judgment creditor or in proceedings supplementary to execution.

HISTORY: Source: L. 33: p. 358, § 14.CSA: C. 25, § 82.CRS 53: § 122-1-9. C.R.S. 1963: § 122-1-9.

### 11-41-101. General organization

Domestic associations may be incorporated with shares or stock or both and with all the rights, powers, and privileges and subject to all the restrictions set forth in articles 40 to 46 of this title.

HISTORY: Source: L. 33: p. 287, § 1.CSA: C. 25, § 4.CRS 53: § 122-2-1. C.R.S. 1963: § 122-2-1.

Cross references: For provisions regarding funeral contract trust funds, see article 15 of title 10; for provisions regarding the "Money Transmitters Act", see article 52 of title 12; for the "Unclaimed Property Act", see article 13 of title 38.

Cross references: For electronic funds transfers for financial institutions organized under this article, see article 48 of this title.

### 11-41-102. Restriction on corporate name

The name of each domestic association incorporated on or after May 17, 1939, shall include the words "savings and loan association". If the name of the domestic association contains the words "savings and loan association", it need not comply with the requirements of part 6 of article 90 of title 7, C.R.S. No association shall include in its name the words "guaranty" or "guarantee" or "mutual", unless organized without stock, or "permanent", unless organized with stock. The provisions of this section shall not affect the right of any association existing before May 17, 1939, to continue the use of its name.

**HISTORY:** Source: L. 33: p. 287, § 2.CSA: C. 25, § 5.L. 39: p. 238, § 5.CRS 53: § 122-2-2. C.R.S. 1963: § 122-2-2.L. 79: Entire section amended, p. 430, § 2, effective June 19.L. 93: Entire section amended, p. 861, § 28, effective July 1, 1994.L. 2000: Entire section amended, p. 989, § 107, effective July 1.

#### ANNOTATION

Where the name assumed by a corporation is not in compliance with this section, all possibility of the mutual rights and obligations which obtain between building and loan associations and their members is excluded. Int'l. Improvement Co. v. Wagner, 22 Colo. App. 489, 125 P. 597 (1912).

## 11-41-103. Use of name "savings and loan association" restricted

It is unlawful for any person, firm, company, association, partnership, society, or corporation, either domestic or foreign, to transact business under any name or title which contains the term "savings and loan", or use any sign or circulate or use any letterhead, billhead, circular, or paper whatsoever, or advertise in any manner to indicate that its business is the character or kind of business carried on or transacted by a savings and loan association or which is calculated to lead the public to believe that its business is that of a savings and loan association, unless it is lawfully authorized to do business in this state under the provisions of articles 40 to 46 of this title or its charter and is actually engaged in carrying on a savings and loan business in this state under the provisions of said articles 40 to 46, and, upon action brought by the commissioner, injunction will lie to restrain any person, firm, company, partnership, society, corporation, or agent thereof from continuing to violate any of the provisions of this section.

HISTORY: Source: L. 33: p. 359, § 18.CSA: C. 25, § 86.CRS 53: § 122-2-3. C.R.S. 1963: § 122-2-3.

#### ANNOTATION

Law reviews. For article, "Foreign Savings and Loan Associations Not Doing Business in Colorado", see 16 Colo. Law. 43 (1987).

## 11-41-104. Articles of incorporation

- (1) Any five or more persons who are citizens of this state and who may desire to form a corporation for the purpose of carrying on the business of a savings and loan association shall make, sign, and acknowledge, in triplicate, before some officer competent to take the acknowledgment of deeds, a certificate in writing, known as the articles of incorporation, in which shall be stated:
- (a) The name of said association, which shall not be identical with that of any other association in this state nor which so resembles the name of any other association as to be likely to lead to confusion as to its identity;
- (b) The objects for which the association is formed;
- (c) The name of the city or town and county in this state wherein the principal office of the association is to be located;
- (d) In the event it is a permanent stock company, the number of shares of permanent stock authorized and the number of shares of permanent stock subscribed for and the amount of cash actually paid in thereon;
- (e) The names of the incorporators, their respective occupations and residence addresses, and a statement of the number of shares or amount of stock subscribed by each and the amount of cash paid upon the shares or stock of each;
- (f) The kind or classes of shares or stock the association proposes to issue and a statement of all or any of the designations and the powers, rights, qualifications, limitations, or restrictions in respect of any classes of stock or shares of the association;
- (g) That the association shall have perpetual existence;
- (h) Whether or not cumulative voting shall be allowed in the election of directors;
- (i) That, if such is the case, the association is created for the purpose of carrying on part or all of its business beyond the limits of this state:
- (j) The number of directors and the names and residences of the directors who shall serve for the first year of its existence and until their successors are elected and qualified;
- (k) A statement as to whether the association is organized to issue and sell its shares and otherwise operate as a share association or to accept savings deposits and operate as a deposit association, as provided by the provisions of articles 40 to 46 of this title.
- (2) The certificate may also contain any other provisions which the incorporators may see fit to insert for the regulation and conduct of the affairs of the association, the directors, shareholders, and stockholders, or any class of shareholders or stockholders, but such provisions shall not conflict with the provisions of articles 40 to 46 of this title or the laws of the state of Colorado.
- (3) The provisions of this section shall be the exclusive authority for the incorporation of a domestic association, and nothing in either section 11-41-121 (1.5) or 11-41-133 (6) shall be construed or interpreted to authorize the organization of a domestic association by a foreign association by incorporation of a charter de novo.

**HISTORY:** Source: L. 33: p. 288, § 3.CSA: C. 25, § 6.CRS 53: § 122-2-4. C.R.S. 1963: § 122-2-4.L. 69: p. 1014, § 4.L. 88: (3) added, p. 457, § 1, effective July 1.

Cross references: For persons before whom acknowledgments may be taken, see § 38-30-126.

## 11-41-105. Minimum stock subscription - issuance of preferred stock

- (1) No permanent stock association shall be organized on or after July 1, 1983, unless, prior to the filing of its articles of incorporation, such minimum amount of its permanent stock and paid-in surplus as required by the commissioner has been subscribed for and the same paid for in lawful money of the United States and is in the custody of the persons named in the articles of incorporation as the members of the first board of directors.
- (2) Preferred stock may be issued by a permanent stock association at any time and shall have such preferences, powers, conversion provisions, and rights as the board of directors of the association may approve.

**HISTORY:** Source: L. 33: p. 289, § 4.CSA: C. 25, § 7.L. 39: p. 261, § 36.L. 43: p. 200, § 1.CRS 53: § 122-2-5. C.R.S. 1963: § 122-2-5.L. 77: Entire section amended, p. 569, § 2, effective July 1.L. 83: (1) amended, p. 489, § 1, effective April 26.

## 11-41-106. Approval of articles of incorporation

The articles of incorporation of any savings and loan association organized under articles 40 to 46 of this title shall not be filed in the office of the secretary of state of the state of Colorado or be received by the secretary of state for filing unless accompanied by a certificate of approval by the commissioner.

HISTORY: Source: L. 33: p. 290, § 5.CSA: C. 25, § 8.L. 39: p. 238, § 6.CRS 53: § 122-2-6. C.R.S. 1963: § 122-2-6.

## 11-41-107. Documents deposited with commissioner

- (1) Every domestic savings and loan association proposing to incorporate in this state shall first deposit with the commissioner the following documents:
- (a) Two signed and verified copies of the articles of incorporation of the association;
- (b) Two copies of the bylaws of the association;
- (c) Applications signed and verified by a majority of the initial directors of such association, setting forth: Names and addresses of the proposed incorporators, directors, and officers of such association; a statement of the experience and general fitness of the officers and directors to engage in the savings and loan business; an itemized statement of the estimated receipts and expenditures of such association for the first year showing that such association will have a reasonable chance to succeed in the territory in which it proposes to operate; and such other matters as the commissioner may require. Such application shall be accompanied by a fee in the form of a certified check in the amount established by the commissioner, payable to the division of financial services.
- (2) Upon receipt of such documents, the commissioner shall immediately examine and investigate into the advisability of issuing a certificate of approval for such association, and he shall issue such certificate of approval if, upon examination, the commissioner finds:
- (a) That the articles of incorporation comply with all the provisions of articles 40 to 46 of this title;
- (b) That the bylaws comply with the provisions of articles 40 to 46 of this title;
- (c) That the provisions of articles 40 to 46 of this title have been complied with;
- (d) That it is expedient and desirable to permit such association to engage in business;
- (e) That the officers and directors have the experience and general fitness to engage in a savings and loan business;
- (f) That the financial program of the association is sound;
- (g) That the association has a probable chance to succeed;
- (h) That its name is not so similar to that of any other association operating in this state as to mislead the public; but the words "the", "and", "mutual", "permanent", and "savings and loan association" shall not themselves constitute such similarity of names as to be likely to mislead the public.
- (3) If the commissioner's finding is adverse to the association in any of the particulars recited in subsection (2) of this section, he shall not issue a certificate of approval.

**HISTORY:** Source: L. 33: p. 291, § 6.CSA: C. 25, § 9.L. 39: p. 238, § 7.CRS 53: § 122-2-7. C.R.S. 1963: § 122-2-7.L. 83: (1)(c) amended, p. 493, § 1, effective July 1.L. 84: (1)(c) amended, p. 377, § 2, effective May 11.L. 89: (1)(c) amended, p. 620, § 13, effective July 1.

## 11-41-108. Refusal of certificate - appeal

If the commissioner, after an examination, believes for any reason that a certificate of approval should not be issued and refuses to issue the same, he shall file a written statement with a board consisting of the governor, the attorney general, and the state treasurer of the state of Colorado giving in detail his reasons for such refusal. After notice to all concerned and after a hearing, said board may order the commissioner to issue the certificate of approval or may approve his action in refusing a certificate of approval.

HISTORY: Source: L. 33: p. 293, § 7.CSA: C. 25, § 10.CRS 53: § 122-2-8. C.R.S. 1963: § 122-2-8.

Cross references: For hearing procedures, see § 24-4-105.

## 11-41-109. Certificate of approval - where articles filed

- (1) If the commissioner finds affirmatively for the association upon all the matters set forth in section 11-41-107, he shall issue a certificate of approval under his hand and seal, executed in duplicate, within sixty days thereafter, in which shall be recited in substance the following:
- (a) That the articles of incorporation and bylaws have been filed in his office;

- (b) That said articles of incorporation and bylaws conform to the provisions of the law;
- (c) That he has approved the same.
- (2) The commissioner shall attach one of said certificates to each copy of the articles of incorporation and shall retain one copy of the articles of incorporation and bylaws in his office and return the other copy of the articles and bylaws, with the certificate of approval attached thereto, to the association. Upon receipt from the commissioner of the articles of incorporation, the association shall file the same with the secretary of state, and certified copies of the articles of incorporation shall be filed by the association in the office of the county clerk and recorder of each county in this state in which said association may own real estate. The failure to file a certified copy in the office of the clerk and recorder of any county in this state shall not affect the validity of the incorporation of any association which has made its filing with the secretary of state and has obtained a certificate of approval. In the event a true copy of such articles of incorporation is presented to the secretary of state with the request that the same be certified, he shall certify the same for a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., which certificate shall contain, in addition to the usual statement, a statement that the same is a true copy of the original articles of incorporation on file in his office and a statement as to the date of the filing of such articles of incorporation. When articles of incorporation or amendments thereto have been filed in the office of the secretary of state, he shall record and carefully preserve the same in his office, and a copy thereof, duly certified by the secretary of state under the great seal of the state of Colorado, shall be evidence of the existence of such association and prima facie evidence of the contents of said articles of incorporation or such amendments thereto.
- (3) The secretary of state shall charge for the filing of documents for savings and loan associations the same fees that are charged for corporations with like capital stock, as prescribed in the "Colorado Corporation Code", and such fees shall be deposited in the department of state cash fund created in section 24-21-104 (3), C.R.S.

**HISTORY:** Source: L. 33: p. 293, § 8.CSA: C. 25, § 11.CRS 53: § 122-2-9. C.R.S. 1963: § 122-2-9.L. 67: p. 492, § 1.L. 83: (2) and (3) amended, p. 876, § 41, effective July 1.

Editor's note: The "Colorado Corporation Code", articles 1 to 10 of title 7, referred to in subsection (3) was repealed, effective July 1, 1994, and was replaced on that date by the "Colorado Business Corporation Act", articles 101 to 117 of title 7.

Cross references: For fees for filing documents under the "Colorado Business Corporation Act", see part 2 of article 101 of title 7.

### 11-41-110. Body corporate

Upon making the articles of incorporation, obtaining a certificate of approval from the commissioner, filing the articles of incorporation and certificate of approval in the office of the secretary of state, and paying the filing fees therefor to the secretary of state, the persons so associating and their successors and assigns shall, from the date of the filing of the same with the office of the secretary of state, be a body corporate by the name set forth in said articles of incorporation, subject to dissolution as provided in articles 40 to 46 of this title and the laws of Colorado not in conflict with said articles 40 to 46. No association shall cease to exist or expire from neglect on the part of the association to elect officers or directors at the time mentioned in their articles of incorporation and bylaws, and all officers or directors elected by an association shall hold office until their successors are duly elected and qualified.

HISTORY: Source: L. 33: p. 295, § 9.CSA: C. 25, § 12.CRS 53: § 122-2-10. C.R.S. 1963: § 122-2-10.

## 11-41-111. Renewal of corporate life

- (1) Any association incorporated under any law prior to June 8, 1933, may extend its corporate life upon the affirmative vote of at least a majority of its directors at a special meeting of the board of directors called for that purpose, setting out the purpose of said meeting, and ratified by the written consent of persons holding in the aggregate more than two-thirds in book value of the outstanding stock and shares in such association.
- (2) The president or vice-president and the secretary or assistant secretary of said association shall certify the fact, under the seal of said association, and shall make as many certificates as may be necessary so as to file one in the office of the county clerk and recorder in each county wherein the association may do business, one in the office of the secretary of state, and one in the office of the commissioner, and thereupon the corporate life of said association shall be renewed in perpetuity, or for the term mentioned in the certificate, upon filing such certificate in the office of the secretary of state. All stockholders or shareholders have the same rights in the new association, so extended, as they had in the association as originally formed.
- (3) The extension of the term of existence of any such association in the manner provided shall not be so construed as enlarging any of the powers, privileges, or franchises theretofore enjoyed by such association. Upon the proper filing of any certificate of extension mentioned in articles 40 to 46 of this title, the corporate existence shall be considered as extended and continuous for the period specified in such certificate from the date of the previous expiration of such corporate existence, and said association shall be considered as then having had a continuous corporate existence to the time of the filing of such certificate of renewal.

HISTORY: Source: L. 33: p. 295, § 10.CSA: C. 25, § 13.CRS 53: § 122-2-11. C.R.S. 1963: § 122-2-11.

## 11-41-112. Powers of savings and loan associations

- (1) Savings and loan associations have the following powers:
- (a) To have succession of its corporate name;
- (b) As to all associations incorporated prior to June 8, 1933, to have existence for the period named in their articles of incorporation and, on the termination of such period, perpetually if so provided in the extension;
- (c) As to all associations incorporated under articles 40 to 46 of this title, to have existence perpetually;
- (d) To sue and be sued in any court of law or equity;
- (e) To have a corporate seal and to alter the same and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise;
- (f) To appoint such officers and agents as the business of the association shall require and allow them reasonable compensation;
- (g) To make bylaws, not inconsistent with the constitution or laws of the United States or of this state or the provisions of articles 40 to 46 of this title, and alter the same at pleasure, and make all needed rules and regulations for the transaction of its business and the control of its property and affairs, if a certified copy of same has been filed with the commissioner. The bylaws of an association may be amended either by the stockholders or shareholders at their annual meeting or by the board of directors of an association at any regular meeting of the board of directors; but no change in the bylaws shall take effect until approved by the commissioner.
- (h) To acquire, hold, mortgage, and convey all such real estate and personal property as may be transferred to it in the operation of its business:
- (i) To levy, assess, and collect from its shareholders such sums of money by way of installment dues and interest on loans as the association may provide in its bylaws;
- (j) To issue and sell shares as provided in sections 11-42-101 to 11-42-106 or, in the case of deposit associations operated under the provisions of section 11-42-125, to accept savings deposits as provided by such section;
- (k) To redeem its shares and repay the funds acquired thereby with such earnings as the same may be entitled according to the terms of the issue thereof if the same are no longer required for the purposes of the association;
- (I) To act as a trustee, custodian, or manager or in any other fiduciary capacity to the same extent authorized and permitted from time to time by the laws and regulations applicable to federal savings and loan associations in Colorado, and upon specific approval by the commissioner, by permission granted such federal associations by the federal office of thrift supervision or its successor, including specifically, but without limitation, the power to act as the trustee, custodian, or manager of any trust created or organized in the United States and forming a part of a stock bonus, pension, profit-sharing, or retirement plan that is qualified for specific tax treatment under the provisions of the federal "Self-Employed Individuals Tax Retirement Act of 1962", as from time to time amended or supplemented, or under the provisions of any other act of congress enacted after June 2, 1971, as a substitute or replacement for the federal "Self-Employed Individuals Tax Retirement Act of 1962" or under the provisions of the federal "Employee Retirement Income Security Act of 1974", 29 U.S.C. sec. 1001 et seq., as from time to time amended or supplemented. The association managing funds of any such plan, trust, or fund shall have, to the extent applicable to federal savings and loan associations in Colorado, all of the rights, powers, privileges, and immunities and shall be subject to the same obligations and duties as an individual fiduciary under like circumstances with power to make investments. All funds held in such fiduciary capacity by any association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this paragraph (I). An association acting as a trustee may control accounts in or securities of such association pursuant to the exercise of its authority as a trustee. The exercise by an association of any authority vested in it shall not affect any othe
- (m) To, subject to the regulations of the United States treasury department and the federal office of thrift supervision or its successor, establish a tax and loan account and serve as a depository for federal taxes or as a treasury tax and loan depository, and to satisfy any requirement in connection therewith;
- (n) To provide in its articles of incorporation for the elimination or limitation of the personal liability of a director to the corporation or to its stockholders for monetary damages for breach of fiduciary duty as a director; except that such provision shall not eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for: Any breach of the director's duty of loyalty to the corporation or its stockholders; acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for any act or omission occurring prior to the date when such provision becomes effective.
- (o) Pursuant to federal law or under such rules and regulations as may be prescribed by the financial services board and subject to regulations promulgated by the commissioner of insurance concerning the sale of insurance by savings and loan associations as provided in section 10-2-601, C.R.S., to act as the agent, through the savings and loan association or any service corporation thereof, for any fire, life, or other insurance company authorized to do business in this state by soliciting and selling insurance and

collecting premiums on policies issued by such company. For services so rendered, such savings and loan association or service corporation of such savings and loan association may receive such fees or commissions as may be agreed upon between such entity and the insurance company for which it may act as agent.

**HISTORY:** Source: L. 33: p. 295, § 11(1)-(11).CSA: C. 25, § 14.CRS 53: § 122-2-12. C.R.S. 1963: § 122-2-12.L. 69: p. 1014, § 5.L. 71: p. 1145, § 1.L. 79: (1)(m) added, p. 430, § 3, effective June 19.L. 81: (1)(l) amended, p. 622, § 1, effective May 18.L. 87: (1)(n) added, p. 368, § 6, effective May 20.L. 97: (1)(o) added, p. 432, § 9, effective April 24.L. 2004: (1)(l) and (1)(m) amended, p. 135, § 13, effective July 1.

Cross references: For the "Self-Employed Individuals Tax Retirement Act of 1962", see Pub.L. 87-792, 76 Stat. 809; for the "Employee Retirement Income Security Act of 1974", see Pub.L. 93-406, codified at 29 U.S.C. sec. 1001 et seq.

#### ANNOTATION

Law reviews. For article, "1988 Update on Colorado Tort Reform Legislation -- Part II", see 17 Colo. Law. 1949 (1988). For article, "Corporate Director Liability", see 65 Den. U. L. Rev. 59 (1988).

A savings and loan association may not by bylaw repeal the right of withdrawal of a member without his consent. Holyoke Bldg. Loan Ass'n v. Lewis, 1 Colo. App. 127, 27 P. 872 (1891).

A holder of note of an association is precluded from selling collateral. The holder of a note against a building and loan association is precluded from resorting to a sale of his collateral security to satisfy the same; his recourse, where the association is in receivership, being to file his claim in due course. Reserve Bldg. Loan Ass'n v. Jamison, 108 Colo. 503, 119 P.2d 621 (1941).

### 11-41-113. Federal home loan bank membership

- (1) Any savings and loan association organized and incorporated under the laws of this state as a savings and loan association that is eligible to become a member of the federal home loan bank, in accordance with the provisions of the act of congress known and cited as the "Federal Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq., approved July 22, 1932, is authorized to subscribe for stock of the federal home loan bank for the district in which it is located and to invest its funds in such stock for the purpose and to the extent required and permitted by the provisions of the "Federal Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq., or any amendment thereto, and is further authorized to furnish to the federal office of thrift supervision or its successor and to the federal home loan bank reports of examinations of such associations made by the commissioner, and is further authorized to consent to an examination to be made by the federal office of thrift supervision or its successor or the federal home loan bank, and is further authorized to do all other things as may be required by the "Federal Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq., or any amendment thereto, necessary to obtain and to continue membership in the federal home loan bank and to obtain advances therefrom or that may be incidental to acquiring or holding membership and to obtaining advances therefrom, and is authorized to assume all the duties, obligations, responsibilities, and liabilities and become entitled to all the benefits provided in the "Federal Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq.
- (2) Any savings and loan association has the power to borrow money from the federal home loan bank, when authorized by resolution of its board of directors, upon such terms and rates of interest as may be agreed upon and is authorized to assign and pledge its notes, bonds, mortgages, or other property and to repledge the shares of stock pledged to it as collateral security without securing the consent of the owner thereto as security for the repayment of its indebtedness for money borrowed.
- (3) Such pledgee of any note or other evidence of indebtedness due to an association has the right to enforce in its own name or in the name of the association all appropriate remedies to enforce collection, whether or not the shares described in connection with said note are held by such pledgee. Any obligation incurred by or loan made to an association shall constitute a claim against the association's assets and shall be payable in advance of and by preference over all claims or rights of the shareholders or stockholders of such association and shall be prior to and outrank any demand or application for withdrawal or cancellation of all classes of shares or stock or units or certificates in said association including prepaid and matured shares. The existence of a withdrawal list consisting of members desiring to withdraw from the association shall not prevent the board of directors of such association, in its discretion, from borrowing money from the federal home loan bank, to be used for the purpose of making mortgage loans to the members of the association or retiring bank loans, in which event all such amount of borrowed money may be exclusively used for the purpose borrowed or for other purposes, subject to the approval of the commissioner; but no savings and loan association shall at any time borrow money from the federal home loan bank in an amount exceeding any limit fixed by the laws of this state.
- (4) Any savings and loan association having funds in its treasury for investment, which funds are deemed by it to be in excess of the amount needed for loans to its members and for the payment of matured shares and withdrawals, has the power to invest such portion of these excess funds in the obligations, bonds, debentures, and other securities of the federal home loan bank; but such investments may not be made in an amount in excess of the limit, if any, provided by the laws of this state for investment of funds in classes of investment other than in mortgage loans to members of the association.
- (5) Any officer, director, trustee, attorney, or agent of a savings and loan association, or other borrower, acting as agent for a federal home loan bank in the collection of interest, amortization, or installment payments on collateral deposited with said bank, who applies the proceeds of such collections otherwise than as provided in the agreement with the bank is guilty of theft and shall be subject to the punishment provided by the laws of this state for that offense.

**HISTORY:** Source: L. 33: p. 300, § 11(12).CSA: C. 25, § 14.CRS 53: § 122-2-13. C.R.S. 1963: § 122-2-13.L. 2004: (1) amended, p. 136, § 14, effective July 1.

### 11-41-114. How funds invested

- (1) Any savings and loan association may invest any portion of its funds in any of the following:
- (a) Loans to its members, secured by first lien trust deeds or mortgages upon improved real estate, and upon such plans of repayment, as provided in section 11-41-119, and in such other loans to its members as the commissioner may approve;
- (b) Bonds and other obligations of, or guaranteed as to interest and principal by, the United States;
- (c) Bonds or debentures issued by any federal home loan bank in accordance with the provisions of the "Federal Home Loan Bank Act";
- (d) Consolidated federal home loan bank bonds or debentures issued by the federal home loan bank administration in accordance with the provisions of the "Federal Home Loan Bank Act";
- (e) Bonds or debentures issued by the federal deposit insurance corporation or its successor in accordance with the provisions of Title IV of the "National Housing Act", and any amendments thereto;
- (f) Insured shares of savings and loan associations to the extent that each investment is insured by the federal deposit insurance corporation or its successor and uninsured shares of savings and loan associations but not to exceed ten thousand dollars in any one uninsured association, if such associations are incorporated under the laws of this state or the federal government and are doing business in this state and if such associations are functioning and operating without any restrictions imposed by order of the commissioner or federal home loan bank administration;
- (g) Bonds and legal registered warrants as are a direct obligation of the state of Colorado or of any county, city and county, school district, or incorporated city or town therein which has continuously existed as a lawful corporation for a period of at least fifteen years prior to the date thereof and whose bonds have not been in default as to principal or interest for a period of five years prior to the purchase of the same by any savings and loan association;
- (h) Other investments, as approved by the commissioner, in which and to the same extent that savings and loan associations, chartered in accordance with the provisions of the "Home Owners' Loan Act of 1933", as amended, may invest;
- (i) (1) Capital stock, obligations, or other securities of any corporation, if such corporation is engaged only in such businesses and activities as may be engaged in by corporations whose capital stock is a lawful investment for federal savings and loan associations under the laws, rules, and regulations applicable to all federal savings and loan associations similarly situated. The maximum total investment by any association in any such corporation or combination of corporations shall not exceed the maximum investment which federal savings and loan associations are permitted to maintain in capital stock, obligations, or other securities of similar corporations.
- (II) In addition to the maximum total investment provided in subparagraph (I) of this paragraph (i), an association may invest an additional three percent of its assets in such corporation or combination of corporations solely for residential real estate development through joint ventures. Nothing in this subparagraph (II) shall authorize participation in such joint ventures conditioned upon utilization of any real property held, directly or indirectly, by such corporation. This subparagraph (II) shall not be construed to authorize such corporation or combination of corporations to invest in real property unless such investment is initiated through a joint venture.
- (III) No association organized under the laws of this state shall acquire the capital stock, obligations, or other securities of any such corporation until there has been filed in the office of the commissioner a statement by such corporation agreeing to permit, and pay all costs of, such examinations or audits of the corporation by the commissioner as he deems necessary in order to confirm compliance with the provisions of this paragraph (i).
- (j) Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under Title I of the "Housing and Community Development Act of 1974", as amended, but no investment in real property may exceed an aggregate investment of two percent of the assets of the association;
- (k) Loans as to which the association has the benefit of any guaranty under Title IV of the "Housing and Urban Development Act of 1968", as amended, or under part B of the "Urban Growth and New Community Development Act of 1970", as amended, or under section 802 of the "Housing and Community Development Act of 1974", as amended, or of a commitment or agreement therefor;
- (I) Revenue obligations issued to provide, enlarge, or improve electric power, gas, water, and sewer facilities by any city or town having a population of not less than two thousand people at the time of the investment located in any state in the United States and such investment shall be in accordance with the laws of this state.
- (2) In addition to the acceptance of deposit or share accounts, any association may borrow money and negotiate for and receive such long-time or short-time loans evidenced by notes, bonds, debentures, or other securities as may be found necessary to advance the purposes of the association, subject to any limitations as to the total aggregate amount of such borrowings contained

in the charter or articles of incorporation of the association or imposed by rules and regulations duly adopted by the commissioner. Except as limited by the terms of its charter or articles of incorporation or by duly adopted rules and regulations of the

commissioner, an association may secure such borrowings by the mortgage, pledge, collateral assignment, or other hypothecation of its properties, including a trust or pool or mortgages or other encumbrance held by it. Without limiting the generality of the foregoing, an association may issue and sell securities guaranteed pursuant to section 306 (g) of the "National Housing Act", as amended, and may secure such securities as permitted in this subsection (2) and may issue and sell any other guaranteed or unguaranteed securities of a type or kind which may be issued and sold by federal savings and loan associations and secure the same with the property of the association to the same extent as permitted for federal savings and loan associations.

- (3) Any association may invest in real estate or interests therein, including buildings and related parking facilities, for use in the conduct of the business of the association or for the conduct of such business and for rental to others of excess space; but no such investment may be made without the prior approval in writing of the commissioner if the total amount of all of such investments made by the association exceeds the aggregate amount of the association's general reserves, undivided profits, and surplus. A permitted investment under the foregoing provision shall be deemed to include the ownership of stock of a wholly-owned subsidiary corporation having as its exclusive activity the ownership and management of such property or interests.
- (4) An association may loan an amount not exceeding three percent of the association's assets in a manner not otherwise authorized by articles 40 to 47 of this title, on condition that such loans are related to real estate or housing.
- (5) An association may invest in real estate, real estate interests, and real estate related enterprises for the purpose of producing income, for inventory and sale, improvement, or rental by direct purchase or otherwise. The maximum total investment by an association pursuant to this subsection (5) shall not exceed ten percent of its assets reduced by the amount invested by the association in real estate through service corporations pursuant to paragraph (i) of subsection (1) of this section. In connection with such investment, the association may exercise all rights of an owner.

**HISTORY:** Source: L. 33: p. 303, § 11(13).CSA: C. 25, § 14.L. 39: p. 240, § § 10, 11.L. 45: p. 238, § 1.CRS 53: § 122-2-14.L. 57: p. 650, § 1.L. 59: p. 664, § 6. C.R.S. 1963: § 122-2-14.L. 69: p. 1014, § 6.L. 71: pp. 1145, 1146, § § 2, 3.L. 72: p. 617, § 151.L. 77: (4) added, p. 570, § 3, effective July 1.L. 79: (1)(j), (1)(k), and (1)(l) added, p. 431, § 4, effective June 19.L. 83: (1)(i) amended, p. 495, § 1, effective May 25.L. 85: (5) added, p. 397, § 2, effective May 16.L. 2004: (1)(e) and (1)(f) amended, p. 149, § 54, effective July 1.

Cross references: For other legal investments, see § § 32-4-544 and 32-11-810; for the "Federal Home Loan Bank Act", see Pub.L. 72-304, codified at 12 U.S.C. sec. 1421 et seq.; for the "National Housing Act", see Pub.L. 73-479, codified at 12 U.S.C. sec. 1710 et seq.; for the "Home Owners' Loan Act of 1933", see Pub.L. 73-42, codified at 12 U.S.C. sec. 1461 et seq.; for the "Housing and Community Development Act of 1974", see Pub.L. 93-383, 88 Stat. 633 (1974); for the "Housing and Urban Development Act of 1968", see Pub.L. 90-448, 82 Stat. 476 (1968); for the "Urban Growth and New Community Development Act of 1970", see Pub.L. 91-609, 84 Stat. 1791 (1970).

### ANNOTATION

Law reviews. For article, "The Convertible, Participating Mortgage: Planning Opportunities and Legal Pitfalls in Structuring the Transaction", see 54 U. Colo. L. Rev. 295 (1983).

### 11-41-115. Interest rates on loans

- (1) Any savings and loan association may charge, contract for, and recover such rate of interest as may be provided in the notes or other evidences of indebtedness taken by the association. Notes secured solely by the pledge of shares and notes secured by real estate mortgages repayable upon the sinking fund plan shall be nonnegotiable in form, and all other notes, including those insured by the federal housing administrator and those taken in connection with loans to veterans under the provisions of the "Servicemen's Readjustment Act of 1944", may be either negotiable or nonnegotiable in form.
- (2) A substantial portion of the business of all associations shall be devoted to the acceptance of savings deposits from or the sale of their shares to their members and the lending of those funds to their members as set forth in section 11-40-103 and otherwise in articles 40 to 46 of this title, but associations may also purchase loans of a type which they are permitted to make and sell loans with or without recourse so long as such purchase or sale of loans is conducted as a part of and in connection with the other permitted business activities of an association.
- (3) Each mortgage loan sold by an association may be sold with or without recourse and, if under a contract to service the same, shall be sold on a basis which will reimburse the association adequately for the cost of such servicing. All sale and servicing agreements shall be in writing and on file in the association.
- (4) No interest that may accrue to an association shall be deemed usurious, and the same may be collected as debts of like amount are now by law collected in this state.
- (5) No law of this state limiting interest or interest rates or the compounding of interest shall apply to any graduated payment mortgage or deed of trust made to individuals, or any mortgage or deed of trust to individuals where periodic disbursement of part of the loan proceeds is made by an association over a period of time as established by the mortgage or deed of trust, or over an expressed period of time ending with the death of such individuals, including but not limited to mortgages or deeds of trust having provisions for adding deferred interest to principal or otherwise providing for the charging of interest on interest.

HISTORY: Source: L. 33: p. 305, § 11.CSA: C. 25, § 14.L. 45: p. 239, § 2.CRS 53: § 122-2-15. C.R.S. 1963: § 122-2-15.L. 71: p.

1146, § 4.L. 79: (5) added, p. 431, § 5, effective June 19.L. 83: (3) amended, p. 493, § 2, effective July 1.L. 94: (3) amended, p. 66, § 8, effective July 1.

Cross references: For the "Servicemen's Readjustment Act of 1944", see Pub.L. 78-346, 58 Stat. 284 (1944).

#### ANNOTATION

Law reviews. For note, "Colorado Interest Law", see 34 Dicta 398 (1957).

Applied in Haugen v. Western Fed. Sav. Loan Ass'n, 633 P.2d 497 (Colo. App. 1981).

### 11-41-116. Where associations may operate

Upon approval of the commissioner, a savings and loan association may conduct business in this state, in other states, in the District of Columbia, in the territories and colonies of the United States, and in foreign countries, and have one or more offices out of this state, and own, hold, purchase, mortgage, lease, and convey real and personal property out of this state if such powers are included within the objects set forth in its articles of incorporation and are not in violation of any other provision of articles 40 to 46 of this title.

HISTORY: Source: L. 33: p. 296, § 11.CSA: C. 25, § 14.CRS 53: § 122-2-16. C.R.S. 1963: § 122-2-16.

### 11-41-117. Insurance of shares

- (1) A savings and loan association shall obtain and maintain insurance of its shares with the federal deposit insurance corporation or its successor as provided by the "Federal Deposit Insurance Act", 12 U.S.C. 1811, et seq., and any amendments thereto. Notice of any such actions by associations shall be submitted to the division.
- (2) The commissioner, in connection with all such insured associations, shall furnish said insurance corporation with reports of examination, orders, and requirements issued in connection therewith and other information coming to his attention bearing on the financial condition and administration and may collaborate with said corporation in any merger, reorganization, dissolution, liquidation, or examination and audit of any such insured association.

**HISTORY:** Source: L. 33: p. 241, § 13.CSA: C. 25, § 14(1).CRS 53: § 122-2-17. C.R.S. 1963: § 122-2-17.L. 87: (1) amended, p. 466, § 1, effective July 1.L. 2004: (1) amended, p. 137, § 15, effective July 1.

## 11-41-117.5. Insurance of obligations

- (1) A savings and loan association shall obtain and maintain insurance of its obligations, including accounts, with the federal deposit insurance corporation or its successor.
- (2) (a) An association is further authorized to obtain and maintain insurance of any obligations, including accounts, or portions thereof not otherwise insured pursuant to subsection (1) of this section, with any federal agency, with any state agency, or with any other insurer meeting the requirements of paragraph (b) of this subsection (2).
- (b) Any insurer insuring obligations pursuant to paragraph (a) of this subsection (2), other than the federal deposit insurance corporation or its successor shall be certified by the commissioner as having met the following:
- (I) The contract of insurance contemplated is written upon substantially the same basis as to form, coverage, maturity, voluntary and involuntary termination, and other provisions as the insurance contract provided at that time by the federal deposit insurance corporation or its successor and complies with such further requirements for protection as the commissioner may promulgate by rule
- (II) The insurer has a net worth or, in the case of a governmental or statutorily authorized entity, reserves reasonably commensurate with the risks underwritten.
- (III) The insurer, if a nongovernmental entity, is authorized to do business in this state as an insurer or is otherwise authorized by law to insure obligations.
- (3) Within twenty days after June 30 and December 31 of each year, each insurer certified pursuant to paragraph (b) of subsection (2) of this section shall file with the commissioner a report for the preceding six months showing its financial condition. Said report shall be prepared, insofar as possible, in conformity with generally accepted accounting principles.
- (4) The commissioner or his duly designated representative may investigate the affairs and examine the books, accounts, records, and files of the insurer at such intervals as the commissioner deems prudent, but not less than once a year, and shall have free access for such purposes. Costs of such investigations and examinations shall be paid by the insurer. If any such investigation or examination reveals that the insurer is not conducting its affairs in accordance with this section or that the insurer is not actuarially

sound or is impaired and may be unable to fulfill its obligations, the commissioner may exercise any powers available under article 44 of this title until such time as compliance is restored or the impairment is terminated.

- (5) The commissioner and the insurer may exchange information regarding an insured savings and loan association.
- (6) The commissioner shall determine as of June 30 each year the cost of supervision of the insurer and shall assess such cost against the insurer. The assessment shall be paid on or before September 30 following assessment.

**HISTORY:** Source: L. 83: Entire section added, p. 497, § 1, effective May 26.L. 84: (3) to (6) added, p. 378, § 3, effective May 11.L. 87: (1) amended, p. 466, § 2, effective July 1.L. 2004: (1), IP(2)(b), and (2)(b)(I) amended, p. 137, § 16, effective July 1.

### 11-41-118. Loans - investment in notes or bonds

- (1) Savings and loan associations are authorized:
- (a) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator and to obtain such insurance;
- (b) To make such loans, secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure and to obtain such insurance.
- (2) Associations may sell any loans authorized by this section, and each such loan sold by an association shall be sold without recourse and, if under a contract to service the same, on a basis which will reimburse the association adequately for the cost of such servicing. All sale and servicing agreements shall be in writing and on file in the association.
- (3) It shall be lawful for savings and loan associations to invest their funds and the moneys in their custody or possession which are eligible for investment in notes or bonds secured by mortgage or trust deed insured by the federal housing administrator, and in obligations of national mortgage associations or similar credit institutions organized under Title III of the "National Housing Act", and in debentures issued by the federal housing administrator.
- (4) No laws of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount, or form of such security, or prescribing or limiting the period for which loans or investments may be made, or affecting the negotiability of the loan instrument shall be deemed to apply to loans or investments made pursuant to this section.
- (5) An association may make loans for the purpose of mobile home financing, subject to any limitation as to maximum loan amounts which may be prescribed from time to time by the commissioner for all associations. For the purposes of this subsection (5), "mobile home" means a mobile accommodation used or designed for use as living quarters.
- (6) An association may make loans for the repair, equipping, alteration, or improvement of any real property, including mobile homes, subject to such restrictions, limitations, prohibitions, conditions, and provisions as the commissioner may from time to time, by rule or regulation duly adopted, prescribe.
- (7) An association may make loans or invest in obligations and advances of credit, referred to in this article as "loans", for the payment of expenses for postsecondary school education; but the total aggregate principal amount of an association's investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, shall not exceed five percent of its invested capital.
- (8) An association may issue letters of credit, subject to regulation by the commissioner pursuant to section 11-44-103.

**HISTORY:** Source: L. 33: p. 242, § 14.CSA: C. 25, § 14(2).L. 43: p. 201, § 3.CRS 53: § 122-2-18. C.R.S. 1963: § 122-2-18.L. 69: p. 1015, § 7.L. 73: p. 237, § 16.L. 75: (5) and (6) amended, p. 1464, § 2, effective July 18.L. 76: (6) amended, p. 394, § 1, effective April 19.L. 79: (6) amended, p. 431, § 6, effective June 19.L. 83: (8) added, p. 499, § 1, effective July 1.

Cross references: For the "National Housing Act", see Pub.L. 73-479, codified at 12 U.S.C. sec. 1701 et seq.

### 11-41-119. Loans to members and other loans

- (1) An association may invest any portion of its funds in loans to its members, secured by first lien trust deeds or mortgages upon improved real estate; except that additional loans or advances on the same property secured by additional encumbrances shall be deemed to be first liens for the purposes of articles 40 to 46 of this title, unless an intervening lien has been recorded, and upon the shares issued by such association, or upon both such securities; and except that, only in the case of an association not subject to regulation by the federal deposit insurance corporation or its successor, no one loan can be made in excess of five percent of the gross assets of the association at the close of the preceding month, nor in any event shall the total of loans in excess of fifty thousand dollars exceed twenty percent of the gross assets of the association at the close of the preceding month.
- (2) An association may make loans on the security of its shares if the association obtains a first lien upon, or a pledge of, such account as security therefor. No such loan may exceed the withdrawal or repurchase value of the account securing the loan, and no such loan shall be made when there is an impairment of invested share capital or when the association has any application for

withdrawal which has been on file and unpaid more than thirty days. Upon any default of such loan, the association may, after giving ten days' written notice to the last address of the owner of such account appearing on the books of the association, cancel such account, to the extent and in the amount sufficient to repay said loan and accrued interest thereon. The commissioner may prescribe such regulations concerning such certificate share loans as may be necessary.

- (3) An association may make real estate loans, secured by encumbrances provided for in subsection (1) of this section, repayable upon the following plans:
- (a) (I) Installment loans. Loans may be made or purchased for an amount not in excess of ninety-five percent of the appraised value of the tendered security, repayable within forty years in consecutive monthly, quarterly, or annual installments, equal or unequal. Lump-sum payments may be required in the initial contract. The provisions and limitations of this paragraph (a) shall not apply if authority is otherwise permitted by federal law, rule, or regulation.
- (II) The initial contract may provide for changes in the interest rate based upon an index agreed to by the borrower and the association. Such provision shall specify that changes in the index shall apply equally to increases or decreases in the interest rate. Decreases shall be mandatory and increases may be at the option of the association. Interest changes may be implemented through changes in the installment amount or the rate of amortization, or any combination thereof, as provided in the initial contract. The installment amount may not be increased more often than at the end of any consecutive twelve-month period of the loan term, and shall be sufficient to amortize the remaining principal balance within forty years from the initial date of the loan.
- (b) Loans without amortization. Loans of any type that an association may make on an installment basis may also be made without amortization of principal; but interest shall be payable at least annually, and any such loan may be made for an amount not in excess of eighty percent of the appraised value of the property and for a term of not more than twenty years. The aggregate amount of such loans shall not, at any time, exceed an amount equal to twenty percent of the association's gross assets. In no case may an association provide a loan or loans under this subsection (3) to any one borrower which exceeds five percent of the association's gross assets.
- (c) Construction loans. Loans may be made without full amortization of principal if made for the purpose of construction; but any such loan may be made for an amount not in excess of ninety percent of the appraised value of the property, excluding cost of land, and for a term of not more than one year.
- (d) Sinking fund loans. Loans made under this plan shall be repayable by crediting to such loans the certificate value of pledged savings shares. Such borrowing members shall be required to carry such monthly periodical savings shares with the association as shall have a par value equal to the loan, and every share issued shall be subject to a lien for any advance made thereon or other lawful claims against the holder, and the payments on such pledged shares shall not be less than thirty-five cents per share per month. At the beginning of foreclosure of any mortgage or trust deed to an association securing such sinking fund loans, credit shall be allowed on the mortgage indebtedness for the value of any pledged shares held by the association as collateral for the loan, and the shares shall be cancelled at the conclusion of the foreclosure proceedings.
- (e) Insured or guaranteed loans. An association may make such loans as may be insured or guaranteed by an agency of the federal or state government in such amounts and upon such terms as may be provided by the statutes and regulations affecting such loans, and the proviso in paragraph (a) of this subsection (3) shall not apply to such insured or guaranteed loans.
- (4) Other loans. Any association operating under articles 40 to 46 of this title, notwithstanding anything to the contrary contained therein, may make any type or kind of loan and for any purpose that a federal savings and loan association at any time may be authorized to make by any law, rule, regulation, decision, or order which is or may be applicable to federal savings and loan associations. The commissioner, by rule or regulation duly adopted and applicable to all associations, may also authorize all associations organized and operating under articles 40 to 46 of this title to make any investment, in addition to those expressly permitted by said articles 40 to 46, which federal savings and loan associations are authorized to make by any laws, rules, regulations, decisions, or orders applicable to such federal savings and loan associations; but any rule or regulation adopted by the commissioner granting other investment authority shall, to the extent found by the commissioner to be applicable, be subject to the same limitations, restrictions, prohibitions, conditions, and provisions as are applicable in the case of federal savings and loan associations.
- (5) Loans secured by first lien trust deeds or mortgages upon improved real estate shall not be made until a signed application for such loan has been submitted, nor until a signed appraisal has been submitted, nor until the loan has been approved by the board of directors or by a committee authorized by the board of directors. Appraisals may be made by any two of the association's directors, officers, employees, or attorneys or by an independent appraiser who is not a director, officer, employee, or attorney of the association; but no such officer, director, employee, or attorney shall act as an appraiser nor act on any committee approving a loan in which he has an interest either in the property tendered as security or in the sale of the property. The association shall furnish to each borrower, upon the closing of the loan, a loan settlement statement, indicating in detail the charges or fees such borrower has paid or obligated himself to pay to the association or to any other person in connection with such loan, and a copy of such statement shall be retained in the records of the association.
- (6) Every real estate loan shall be evidenced by a proper instrument in writing obligating the borrower to repay the full amount of the loan and shall be secured by a mortgage or deed of trust constituting a first lien upon real estate securing the loan or, if an additional advance, by a deed of trust or mortgage properly providing for such additional advance. An encumbrance shall provide specifically for full protection to the association with respect to usual insurance risks, taxes, special assessments, other governmental levies, and maintenance and repairs and may provide for an assignment of rents and the appointment of a receiver upon any default.
- (7) An association may pay taxes, special assessments, insurance premiums, repairs, and other charges for the protection of the real estate security. All such payments may be charged to a special account or may be added to the unpaid principal balance of the

loan and shall be equally secured by the first lien on the real property. An association may require life insurance to be assigned as additional security upon any real estate loan; in such event, the association shall obtain a first lien upon such policy and may advance premiums thereon, and such premium advances may be added to the unpaid principal of the loan and shall be equally secured by the first lien on the security property.

- (8) An association may require the borrower to pay monthly in advance, in addition to interest or interest and principal payments, a prorated portion of the estimated annual taxes, assessments, insurance premiums, and other charges upon the real estate securing the loan, or any of such charges, so as to enable the association to pay such charges as they become due from the funds so received. The amount of such monthly charges may be adjusted by the association as the need therefor arises. Every association shall keep an accurate record of the status of taxes, assessments, insurance premiums, and other charges on all real estate securing its loans and on all real and other property owned by it.
- (9) Payment on the principal indebtedness of all loans on real estate security shall be applied directly to the reduction of such indebtedness. Payments on all monthly installment loans, other than construction loans, insured loans, and guaranteed loans, shall begin not later than sixty days after the date of the note. Insured loans and guaranteed loans may be repayable upon terms acceptable to the insuring or guaranteeing agency. An association may charge, for the privilege of prepayment in part or in full of a loan relating to an owner-occupied single family residence, if the original contract so provides, an amount not greater than ninety days' interest on the amount prepaid. An association may charge, for the privilege of prepayment in part or in full for any loan not otherwise specifically provided for in this subsection (9), an amount specified in the original contract. Any loan contract may be modified by the parties by written agreement and within the limitations of this section as the need therefor may arise.
- (10) An association may make additional advances secured by the original encumbrance if the original loan contract makes proper provision therefor.
- (11) An association may purchase loans of any type that it may make, and it may also purchase insured or guaranteed loans made on homes wherever located; but no loan may be purchased from an affiliated company or an officer, director, employee, or attorney of the association without prior approval of the board of directors.
- (12) If additional collateral is encumbered on any loan as additional security, an association may invest in said loan for an amount in excess of the percentage provided in paragraph (c) of subsection (3) of this section. Said association may accept as such additional collateral any security it is authorized to invest in as set forth in section 11-41-114; but such encumbered additional security shall not increase the maximum percentage of said loan beyond the actual value of such additional security.
- (13) An association may lend on the security of a first security interest on stock or a membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation organized under article 33.5 of title 38, C.R.S., and as defined by section 216 of the federal "Internal Revenue Code of 1986", as amended, and the assignment by way of security of the borrower's interest in the proprietary lease or right of tenancy in property covered by such cooperative housing corporation, if all of the real property owned by such corporation is located within the state and if such loan is made subject to the same limitations, restrictions, prohibitions, conditions, and provisions as are applicable in the case of federal savings and loan associations.

**HISTORY:** Source: L. 39: p. 245, § 18.CSA: C. 25, § 14(3).CRS 53: § 122-2-19.L. 55: p. 757, § 3.L. 61: p. 649, § 1. C.R.S. 1963: § 122-2-19.L. 65: p. 970, § 1.L. 69: p. 1015, § 8.L. 75: (4) amended, p. 373, § 2, effective June 26.L. 77: (3)(a) and (4) amended, p. 570, § § 4, 5, effective July 1.L. 80: (13) added, p. 706, § 3, effective July 1.L. 81: (3)(a) and (3)(b) amended, p. 625, § 1, effective May 26.L. 83: (9) amended, p. 500, § 1, effective April 29.L. 2000: (13) amended, p. 1841, § 13, effective August 2.L. 2004: (1) amended, p. 149, § 55, effective July 1.

Cross references: For the "Internal Revenue Code of 1986", see title 26 of the United States Code.

## 11-41-119.5. Reporting of loans. (Repealed)

HISTORY: Source: L. 88: Entire section added, p. 457, § 2, effective July 1.L. 96: Entire section repealed, p. 30, § 3, effective March 13.

## 11-41-120. Branches. (Repealed)

**HISTORY:** Source: L. 33: p. 306, § 13.CSA: C. 25, § 16.CRS 53: § 122-2-20. C.R.S. 1963: § 122-2-20.L. 84: Entire section amended, p. 378, § 4, effective May 11.L. 91: Entire section amended, p. 666, § 6, effective May 31.L. 2003: Entire section amended, p. 1208, § 12, effective July 1.L. 2004: Entire section repealed, p. 137, § 17, effective July 1.

## 11-41-121. Merger, consolidation, and transfer

- (1) As used in this section, the word "association" shall include federal savings and loan associations incorporated under the "Home Owners' Loan Act of 1933".
- (1.5) (a) A domestic association may merge with a foreign association and, subject to the limitations specified in this subsection (1.5), notwithstanding any other provision of articles 40 to 46 of this title to the contrary, if the association proposing to merge with a domestic association is a foreign association, the foreign association shall, in addition to submitting all information pertinent to

the evaluation of the application under this section that the commissioner may require together with all applicable fees, meet the following criteria:

- (I) The foreign association seeking the merger shall have deposits that it may hold insured by the federal deposit insurance corporation or its successor in accordance with the provisions of section 11-41-117; and
- (II) The foreign association shall be in compliance with the capital requirements specified in this subparagraph (II) as follows:
- (A) and (B) (Deleted by amendment, L. 2004, p. 149, § 56, effective July 1, 2004.)
- (C) On and after January 1, 1993, the foreign association shall have a ratio of total capital to total assets of not less than six percent or the prevailing regulatory capital requirements established by the federal deposit insurance corporation or its successor, whichever is greater; and
- (II.5) Once a capital threshold is established in accordance with the provisions of subparagraph (II) of this paragraph (a) it shall be the prevailing standard for purposes of this section to be applied by the commissioner regardless of any reduction below the prevailing regulatory capital threshold requirement unless the general assembly authorizes the application of a lower standard; and
- (III) The commissioner shall not approve any proposed merger under the provisions of this subsection (1.5) if the merger would result in the foreign association controlling at the time of the merger more than twenty-five percent of the aggregate of all deposits in all banks, savings and loan associations, federal savings banks, and other financial institutions located in Colorado, which are federally insured. For the purposes of this subsection (1.5), deposits shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency; and
- (IV) Except as otherwise provided in paragraph (b) of this subsection (1.5), the foreign association shall be domiciled or conduct its principal operations in a state which is both contiguous to Colorado and which also has laws that allow a domestic association to establish business operations in that state under conditions which are determined by the commissioner to be not more restrictive than those provided in articles 40 to 46 of this title. For the purpose of this subparagraph (IV), the place where an association "conducts its principal operations" means the place where the largest percentage of the aggregate deposits of the foreign association and all of its subsidiaries are held.
- (b) On or after January 1, 1991, a foreign association seeking to merge with a domestic association may be domiciled or have its principal offices in any state without regard to its proximity to this state and without regard to the statutory conditions required by subparagraph (IV) of paragraph (a) of this subsection (1.5).
- (c) Whenever a foreign association which meets the criteria established by this subsection (1.5) proposes to merge with a domestic association, the foreign association shall make an application for prior approval to the commissioner in such form and with such information that the commissioner may require, and such application shall be accompanied by a nonrefundable filling fee in such amount as determined by the commissioner. Upon receipt of a properly submitted application for merger, the commissioner shall proceed to investigate the application in accordance with the provisions of this section. The commissioner shall not grant approval of the merger until he is satisfied that the criteria imposed by this section have been met and that the merger is not contrary to the public interest.
- (d) No foreign association may merge with a domestic association except in accordance with the provisions of this section, and no such merger may be completed without the approval of the commissioner.
- (e) Any officer of a foreign association that merges with a domestic association pursuant to this section whose primary duty is managing the day-to-day operations of the Colorado offices of such foreign association shall be a resident of Colorado.
- (f) Nothing in this section shall be construed to limit or otherwise curtail the powers of the commissioner with respect to supervisory mergers as established in section 11-44-110.5.
- (2) Any two or more associations are authorized to merge and become incorporated in one body by transfer of all their assets and obligations upon such terms as set forth in an agreement of merger. The respective boards of directors of such associations, by a majority vote of each board, shall make or authorize to be made between such associations an agreement of merger.
- (3) Copies of the proposed agreement of merger, signed by the president or vice-president of such association and verified by his affidavit and attested by the secretary or assistant secretary thereof with the seal of the association thereunto affixed, shall be submitted together with a fee in the amount established by the commissioner to the commissioner for his approval or disapproval, and he shall cause a certificate of approval or disapproval to be attached to said copies of the proposed agreement, one copy to be filed in the division and one returned to each of the associations.
- (4) If approved by the commissioner, such approved agreement shall be presented to the members of each of the merging associations at special meetings called for the purpose of considering and voting upon such approved agreement; but, in the case of associations having permanent stock, only the holders of the permanent stock shall be entitled to any notice other than the published notice of such special meeting or to vote upon the agreement of merger. The complete agreement of merger, as adopted by the boards of directors and approved by the commissioner, shall be furnished each member entitled to vote on such merger at the time notice of such meetings, as required by section 11-41-123, is given. If at such meetings two-thirds of all votes of the members present in person or by proxy and entitled to vote on such merger are in favor of such approved agreement, the associations may proceed to merge in accordance therewith. The proceedings of such meetings shall be submitted to the commissioner for his approval in the same manner as required for the submission of the agreement by the boards of directors. Unless the agreement of merger fixes a later effective date thereof, the effective date of merger shall be the date upon which the commissioner accepts for filing the certified copies of the proceedings of the meetings of members adopting the approved

agreement of merger.

- (5) In the event any association involved in a proposed merger is a federal savings and loan association, the commissioner shall transmit to the federal office of thrift supervision or its successor, a copy of the proposed agreement of merger and shall not approve the agreement of merger unless and until he or she has been advised in writing by the federal office of thrift supervision or its successor that said office has no objection to the agreement.
- (6) No such transfer shall prejudice the right of any creditor of any such association to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of or prejudiced in any right of action then existing against the officers or directors of said association for any neglect or misconduct, and the reorganized association shall be liable for all obligations to members of the associations existing prior to such consolidation.
- (7) Upon the effective date of the merger, all of the assets and property of every kind and character, real, personal, and mixed and tangible and intangible, choses in action, rights and credits then owned by the merging associations or which inure to any of them, immediately by operation of law, and without any conveyance or transfer, and without any further act or deed, shall be vested in and become the property of the association into which the other associations are absorbed, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, and enjoyed by the merging associations prior to such merger. Such association shall be a continuation of the entity and identity of the association into which the other associations are absorbed, and all of the rights and obligations of the merging associations shall remain unimpaired, and the association, at the time of the taking effect of such merger, shall succeed to all of the rights and obligations and duties and liabilities of the merging associations. All rights and remedies of creditors and all liens upon the property of the merging associations shall be preserved, and all debts, liabilities, and duties of the respective merging associations shall thenceforth attach to the association and may be enforced against it to the same extent as if such debts, liabilities, and duties had been incurred or contracted by it.
- (8) All pending actions or other judicial proceedings to which any of the associations is a party shall not be deemed to have abated or to have discontinued by reason of such merger but may be pressed to final judgment, order, or decree in the same manner as if a merger had not been made; or the association resulting from such merger may be substituted as a party to such action or proceedings, and any judgment, order, or decree may be rendered for or against it which might have been rendered for or against any of the merging associations theretofore involved in such action or other judicial proceedings.

**HISTORY:** Source: L. 33: p. 306, § 12.CSA: C. 25, § 15.L. 39: p. 256, § 33.CRS 53: § 122-2-21. C.R.S. 1963: § 122-2-21.L. 69: p. 1016, § 9.L. 84: (3) amended, p. 378, § 5, effective May 11.L. 88: (1.5) added, p. 458, § 3, effective July 1.L. 2004: (1.5)(a)(I), (1.5)(a)(II)(A) to (1.5)(a)(II)(C), and (5) amended, pp. 149, 138, § § 56, 18, effective July 1.L. 2005: IP(1.5)(a) amended, p. 763, § 17, effective June 1.

Editor's note: In 2000, subsection (1.5)(a)(II)(D), enacted in 1988, was renumbered as subsection (1.5)(a)(II.5) on revision.

Cross references: For the "Home Owners' Loan Act of 1933", see Pub.L. 73-42, codified at 12 U.S.C. sec. 1461 et seq.

## 11-41-122. Membership fees

- (1) Savings and loan associations shall not, directly or indirectly, charge any membership, admission, repurchase, withdrawal, or other fee, fine, penalty, or sum of money for the privilege of becoming, remaining, or ceasing to be a member of the association or for any other cause, except as provided in subsection (2) of this section; except that reasonable charges may be made to reflect the cost of servicing accounts and upon the making, transfer, or assumption of a loan and for defaults and prepayments of a loan and, after July 1, 1977, for the establishment and maintenance of any Keogh or individual retirement account. Reasonable notice of the amount of and conditions relating to such charges shall be given to affected members.
- (2) Subject to such additional limitations, conditions, and provisions as may be promulgated in regulations of the commissioner, a savings and loan association required under a subpoena issued in a civil action to prepare disclosures of private records shall be reimbursed by the requesting party for such services as follows:
- (a) For reproduction costs, including copies produced by printer or reproduction processes, the amount provided in section 13-32-104 (1), C.R.S. Costs of photographs, films, and other materials required shall be reimbursed at actual costs.
- (b) For travel expenses incurred as a result of compliance, the amount provided in section 13-33-103 (1), C.R.S.;
- (c) For personnel costs incurred as a result of compliance, the amount of two dollars and fifty cents for each quarter hour, or fraction thereof.

**HISTORY:** Source: L. 33: p. 354, § 8.CSA: C. 25, § 76.L. 39: p. 252, § 26.CRS 53: § 122-2-22.L. 59: p. 659, § 1. C.R.S. 1963: § 122-2-22.L. 77: Entire section amended, p. 572, § 1, effective June 4.L. 79: Entire section amended, p. 431, § 7, effective June 19.L. 83: Entire section amended, p. 494, § 3, effective July 1.L. 87: Entire section amended, p. 468, § 1, effective May 1.L. 2008: (2)(a) amended, p. 1881, § 15, effective August 5.

## 11-41-123. Directors and meetings

- (1) The corporate powers shall be exercised by a board of directors, which may be any number not less than five as shall be fixed by and stated in the articles of incorporation and which directors shall hold office until their successors are duly elected and qualified. At each annual meeting, the successors to the directors whose terms of office then expire shall be elected by the members entitled to vote at such time and place as shall be directed by the articles or bylaws of the association.
- (2) Public notice of the time and place of holding such elections, and also of all special meetings of the members, shall be published at least once, not more than thirty days nor less than ten days prior to the date fixed for said meeting, in a newspaper of general circulation printed in the county where the principal office of said corporation is located, and, if there is no such newspaper, then in a newspaper printed in an adjoining county, and, with respect to any special meeting or any annual meeting to be held at a time or place other than as specified in the articles of incorporation or bylaws of the association, by delivering personally to each member or depositing in the post office at least thirty days before such meeting a copy of said notice, addressed to each member entitled to vote thereat, with the signature of the president or secretary printed thereon, stating the time and, in case of special meetings, the objects of said meeting; and no business shall be transacted at any special meeting except such as shall be mentioned in said notice; if any member fails to furnish the secretary with his correct post-office address, he shall not be entitled to separate notice.
- (3) Whenever any notice is required to be given under the provisions of articles 40 to 46 of this title or under the provisions of the articles or bylaws of any association organized under the laws of Colorado, a waiver thereof in writing signed by the persons entitled to said notice, whether before, at, or after the time stated therein, shall be deemed equivalent to such notice.
- (4) Members who are entitled to vote may vote either in person or by proxy at such meetings. Any number of members present in person or by proxy at a regular or special meeting of the members shall constitute a quorum unless otherwise specifically provided in articles 40 to 46 of this title. If a majority of the votes represented at any annual or special meeting are in favor of adjournment, such meeting may be adjourned for a period not to exceed sixty days at one adjournment. Each member entitled to vote shall be permitted to cast, in person or by proxy, one vote for each one hundred dollars, or fraction thereof, of the total certificate value of all his shares and stock. A borrowing member holding a membership certificate shall be permitted, as a borrower, to cast one vote and has such voting right in all cases where articles 40 to 46 of this title give such right to shareholders.
- (5) A majority of all votes cast at any meeting of members shall determine any question unless otherwise specifically provided. The members who are entitled to vote at any meeting of the members shall be those of record on the books of the association at the end of the calendar month next preceding the date of the meeting of members, except those who have ceased to be members. In balloting for directors, members may vote for as many directors as are to be elected, or, in case the certificate of incorporation of the association permits cumulative voting, each member may cumulate his votes and give one candidate as many votes as the number of directors multiplied by the number of his votes or distribute them on the same principle among as many candidates as he may desire; and the person having the highest number of votes in consecutive order shall be declared elected. By the unanimous vote of all the members represented at such meeting, the secretary of the meeting may be authorized and instructed to cast one ballot for one or more of all the directors to be elected.
- (6) When any vacancy occurs among the directors by death, resignation, or otherwise, it shall be filled for the remainder of the year by a majority vote of the remaining directors, unless otherwise provided by the bylaws of said association.

**HISTORY:** Source: L. 33: p. 307, § 14.CSA: C. 25, § 17.L. 39: p. 243, § 17.CRS 53: § 122-2-23. C.R.S. 1963: § 122-2-23.L. 69: p. 1016, § 10.L. 84: (1) amended, p. 379, § 6, effective May 11.

#### ANNOTATION

Courts generally will not interfere with management. In the absence of fraud, gross mismanagement, or ultra vires acts by those lawfully entrusted with the management of the corporation, under this section, neither a court of law nor equity has jurisdiction to interfere with or control the internal affairs or policy of the corporation. The rule applies to the setting aside of reserve funds and the declaration of dividends, and courts will not interfere with the discretion of directors in such matters unless they have acted fraudulently, capriciously, or unreasonably. Midland Sav. Loan Co. v. Dunmire, 68 F.2d 249 (10th Cir. 1933).

### 11-41-124. Officers or directors to receive no commission

No officer or director of any savings and loan association shall take or receive for himself, directly or indirectly, any commission, compensation, remuneration, gift, speculative interest, or other thing of value as an inducement to the making of any loan by the association or the purchase of any securities for the association or for the sale of any of the stock of the association.

HISTORY: Source: L. 33: p. 354, § 6.CSA: C. 25, § 74.CRS 53: § 122-2-24. C.R.S. 1963: § 122-2-24.

### 11-41-125. Loans to officers and directors

No officer or director of any savings and loan association shall negotiate for or receive a mortgage loan from such association, except for the bona fide financing of the home of such officer or director, unless the commissioner has first approved such loan.

HISTORY: Source: L. 33: p. 358, § 16.CSA: C. 25, § 84.CRS 53: § 122-2-25.L. 55: p. 761, § 4. C.R.S. 1963: § 122-2-25.

### 11-41-126. Bonds of officers

Every officer, employee, and agent handling or having custody or charge of funds or securities belonging to a savings and loan association, before entering upon the discharge of his duties, shall give a good and sufficient bond in such sum as may be fixed by the board of directors of any such association. Such bond shall be in such form and provide such coverage as the commissioner may direct and shall be made by a surety corporation authorized to do business in this state. The amount of such bond as to each person shall be subject to the approval of the commissioner. In lieu of individual bonds, a blanket bond covering all active officers, agents, and employees of such association may be executed, subject to approval by the commissioner. Every such bond shall be in force until ten days after notice to such commissioner that the same is to be cancelled.

HISTORY: Source: L. 33: p. 362, § 22.CSA: C. 25, § 90.L. 39: p. 255, § 31.CRS 53: § 122-2-26. C.R.S. 1963: § 122-2-26.

### 11-41-127. Violations - penalties

- (1) Any officer, director, agent, or employee of any savings and loan association who, directly or indirectly or by indirection, commits or causes the commission of theft, abstraction, or misapplication of any of the funds or securities or other property of or under the control of any savings and loan association, with intent to deceive, injure, cheat, wrong, or defraud any person, commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.
- (2) Any person who willfully and knowingly violates section 11-41-103 and sections 11-41-124 to 11-41-126 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment, and each such violation shall constitute a separate offense.

**HISTORY:** Source: L. 33: p. 362, § 23.CSA: C. 25, § 91.L. 39: p. 256, § 32.CRS 53: § 122-2-27. C.R.S. 1963: § 122-2-27.L. 77: (1) amended, p. 871, § 26, effective July 1, 1979.L. 89: (1) amended, p. 822, § 13, effective July 1.L. 2002: (1) amended, p. 1471, § 39, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

#### ANNOTATION

Law reviews. For article, "Foreign Savings and Loan Associations Not Doing Business in Colorado", see 16 Colo. Law. 43 (1987).

## 11-41-128. Acknowledgments

No notary public or other public officer qualified to take acknowledgments or proof of written instruments shall be disqualified from taking the acknowledgment or proof of an instrument in writing in which a savings and loan association is interested by reason of his employment by or his being a member or officer of the savings and loan association interested in such instrument.

HISTORY: Source: L. 33: p. 353, § 5.CSA: C. 25, § 73.L. 51: p. 216, § 4.CRS 53: § 122-2-28. C.R.S. 1963: § 122-2-28.

## 11-41-129. Amendment of articles of incorporation

- (1) Except as provided in section 11-41-130.5, if the holders of at least one-third of the outstanding voting stock or shares of any association request, in writing, the president or other head officer thereof to call a meeting of stockholders or shareholders of such association for the purpose of considering a proposed amendment to the articles of incorporation of such association, setting forth in such written request the substance of each proposed amendment, or if the board of directors of any association votes to submit to the stockholders or shareholders thereof a proposed amendment to the articles of incorporation of such association, the president or secretary of the association forthwith shall call a special meeting of the voting stockholders or shareholders of such association for the purpose of considering said proposed amendment for a time not less than thirty nor more than sixty days thereafter. In the event that the request for a meeting of stockholders or shareholders to consider a proposed amendment of the articles of incorporation is presented within ninety days prior to the date of the next annual meeting of the stockholders or shareholders of the association or in the event that the amendment is proposed by the board of directors of the association, the board of directors may cause such proposed amendment to be submitted for consideration at such next annual meeting, or at an adjourned session thereof, rather than at a special meeting of stockholders or shareholders called for such purpose.
- (2) If at any such meeting the proposed amendment to the articles of incorporation of such association receives the affirmative vote of the majority, but in the case of associations having stock issued pursuant to section 11-42-107 two-thirds, or such greater amount as may be required by the articles of incorporation, or any amendment thereto, of the stock or shares of each class

outstanding having voting power, such amendment shall be deemed adopted; but, where necessary for any association to increase its authorized permanent stock to conform to the requirements of said section 11-42-107, the affirmative vote of a majority of such stock or shares shall be required.

- (3) If any proposed amendment to the articles of incorporation would alter or change the preference given to any one or more classes of shares or stock or would convert the stock into shares or shares into stock, the holders of each class of stock or shares so affected by said amendment shall be entitled to vote as a class upon such amendment, whether by the terms of the articles of incorporation such class is entitled to vote or not, and the affirmative vote of the holders of the majority, but in the case of associations having stock issued pursuant to section 11-42-107 two-thirds, of the amount of each class of stock or shares outstanding so affected by the amendment shall be necessary to the adoption thereof, as well as the affirmative vote of the holders of the majority, but in the case of associations having stock issued pursuant to section 11-42-107 two-thirds, of all classes of stock or shares outstanding having voting power.
- (4) A certificate setting forth such amendment and the adoption thereof, signed by the president or vice-president of such association, verified by his affidavit, and attested by the secretary or assistant secretary thereof, with the seal of the association thereunto affixed, shall be submitted together with the fee established by the commissioner to the commissioner for his approval or disapproval, and, if he approves, he shall cause a certificate of approval to be attached to said proposed amendment, and then the same shall be filed in the same manner as articles of incorporation, and thereafter said amendment shall be in full force and effect to the same extent, except as provided in section 11-41-130.5, as if the same had been included in the original articles of incorporation. No amendment to the articles of incorporation shall be filed in the office of the secretary of state of the state of Colorado or received by the secretary of state unless a certificate of approval by the commissioner is attached thereto.
- (5) Except as provided in section 11-41-130.5, any association organized under the laws of this state, from time to time, may amend its articles of incorporation by increasing or decreasing its authorized stock or shares or reclassifying the same, or by changing the number, designation, preference, relation, or participating or other special rights of shares or stock or the qualifications, limitations, or restrictions of such rights, or by changing its corporate title, or by making any other change or alteration in its articles of incorporation that may be desired, if such articles of incorporation, as so amended, contain only such provisions as it would be lawful and proper to insert in original articles of incorporation made at the time of making such amendment. Except as provided in section 11-41-130.5, no association by any amendment shall so change its articles of incorporation as to work a change in the objects or purposes for which the association was originally organized.

**HISTORY:** Source: L. 33: p. 310, § 15.CSA: C. 25, § 18.CRS 53: § 122-2-29. C.R.S. 1963: § 122-2-29.L. 65: p. 971, § 1.L. 69: p. 1017, § 11.L. 84: (1), (4), and (5) amended, p. 379, § 7, effective May 11.

### 11-41-130. Reorganization

- (1) The board of directors of any association, at a meeting called for that purpose, may adopt a plan of reorganization of the association. Two copies of the proposed plan of reorganization, signed by the president or vice-president of such association, verified by his affidavit, and attested by the secretary or assistant secretary thereof, with the seal of the association thereunto affixed, shall be submitted to the commissioner for his approval or disapproval, and he shall cause a certificate of approval or disapproval to be attached to said proposed plan, one copy to be filed in the division and one returned to the association. If approved by the commissioner, such approved plan shall be presented to the members at a special meeting called for the purpose of considering and voting upon such approved plan. The complete plan of reorganization, as adopted by the board of directors and approved by the commissioner, shall be furnished each member at the time notice of such meeting, as required by section 11-41-123, is given. If at such meeting two-thirds of all votes of the members present in person or by proxy are in favor of such approved plan, the association may proceed to reorganize in accordance therewith.
- (2) The proceedings of such meeting shall be submitted to the commissioner for his approval in the same manner as required for the submission of the plan by the board of directors. Unless the plan of reorganization fixes a later effective date thereof, the effective date of reorganization shall be the date upon which the commissioner accepts for filing the certified copies of the proceedings of the meetings of members adopting the approved plan of reorganization.
- (3) The privilege of reorganization is likewise extended to savings and loan associations which are in the course of voluntary or involuntary liquidation.
- (4) In order that equity may be done for all members of such association in the event of reorganization, all pending withdrawal applications shall be cancelled.
- (5) In addition to all other lawful provisions, the plan may provide for the exchange of shares or stock or both in the association for shares or stock or both of the same or a different class of the reorganized association. Without limiting the methods by which an association may reorganize, any association may:
- (a) Provide for reorganization under the existing name of the association or under a different name;
- (b) Provide for segregation by division, on the records of the association or on the records of any reorganized association, of any part of its assets and liabilities, including division of the certificate value of the shares or stock or both, and of any reserves created to absorb losses;
- (c) Provide for segregation by division, between the association and a reorganized association or between two reorganized associations, of any part of its assets and liabilities, including division of the certificate value of the shares or stock or both and of any reserves created to absorb losses;

- (d) Fix the time prior to which notice of withdrawal of such shares so issued in exchange for shares in the associations being reorganized shall not be given.
- (6) The reorganization of such association shall not prejudice the right of any creditor of any such association to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of or prejudiced in any right of action then existing against the officers or directors of said association for any neglect or misconduct. All obligations to any such prior association shall inure to the benefit of the reorganized association and shall be enforceable by it and in its name, and demands, claims, and rights of action against any such association may be enforced against it as fully and completely as they might have been enforced theretofore; and all deeds, notes, mortgages, contracts, judgments, transactions, and proceedings whatsoever theretofore made, received, entered into, carried on, or done by such association before such reorganization shall be as good, valid, and effectual in law as though such association had never been reorganized.

HISTORY: Source: L. 33: p. 365, § 28.CSA: C. 25, § 96.L. 39: p. 258, § 34.CRS 53: § 122-2-30. C.R.S. 1963: § 122-2-30.

### 11-41-130.5. Cessation of business as an association - amendment of articles

- (1) Notwithstanding any provision of this article to the contrary, in connection with the sale of all or a substantial part of its assets, the board of directors of any savings and loan association may propose an amendment to its articles of incorporation to amend the objects and purposes to conform to those authorized in the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., and to make such other amendments authorized by and not inconsistent with the provisions of article 110 of title 7, C.R.S. Such proposed amendments shall be submitted to the members or, if the savings and loan association has permanent stock, to the stockholders of said association for their approval. Upon approval, said amendments shall be submitted to the commissioner, together with a plan pursuant to subsection (2) of this section, for his approval.
- (2) The amendments to a savings and loan association's articles of incorporation shall be accompanied by a plan for the cessation of the conduct of a savings and loan association in the state.
- (3) (a) The commissioner shall approve a plan only if:
- (I) He determines that an association has paid or has made provision through an assumption agreement or otherwise for its known and unclaimed liabilities to its depositors and account holders;
- (II) The amended articles of incorporation delete the words "savings and loan association"; and
- (III) The amended articles of incorporation expressly prohibit the conduct of a savings and loan or banking business in Colorado by the corporation.
- (b) In approving a plan, the commissioner may impose such terms and conditions as he deems necessary to protect the depositors, account holders, stockholders, members, and creditors of the savings and loan association.
- (4) Upon approval of a plan and the amendments to the articles of incorporation by the commissioner pursuant to this article and upon the filing of such amendments, along with the applicable filing fees with the secretary of state as provided by section 11-41-129 (4), a corporation shall continue in existence pursuant to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., but said corporation shall cease to be a savings and loan association or an association. The corporation's certificate of authority as a savings and loan association or an association shall automatically be cancelled, without further action, and the corporation shall be deemed to be organized pursuant to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., and shall cease to be subject to the provisions of the "Savings and Loan Association Law", articles 40 to 46 of this title.

HISTORY: Source: L. 84: Entire section added, p. 380, § 8, effective May 11.L. 93: (1) and (4) amended, p. 861, § 29, effective July 1, 1994.

### 11-41-131. Dissolution

- (1) Any domestic association may elect to abandon its certificate of authority, liquidate its affairs, and dissolve as provided in this section. The affirmative vote of at least a majority of the directors must be cast in favor of such proposal at a special meeting thereof. A certified copy of such action shall be furnished to the commissioner, who shall forthwith examine said association, and, if he determines that such association is solvent and that it is to the best interests of the members that such liquidation be accomplished in the manner provided in this section, he shall certify his approval thereto. Upon the granting of such approval, a special meeting of all members entitled to vote shall be called in the manner provided by section 11-41-123. If a majority vote of all such members of the association is cast in favor of the proposal to liquidate and ultimately dissolve such association under the provisions of this section, such proposal shall be deemed adopted. A certified copy of all proceedings taken prior to and at such meeting shall be filed with the commissioner, who shall determine whether or not such proceedings have been conducted in accordance with law. If the commissioner finds that such proceedings are legal and proper, he shall certify his approval thereon and authorize said association to proceed with the liquidation in the manner provided in this section.
- (2) The board of directors shall act as trustees for liquidation, and shall proceed as speedily as may be practical to wind up the affairs of the association, and, to the extent necessary, shall exercise all the powers granted by articles 40 to 46 of this title to active associations and to the commissioner in the case of departmental liquidation, and, without prejudice to the generality of such authority, may carry out executory contracts, enter into new contracts, borrow money, mortgage or pledge property, sell assets at

public or private sale, make and receive conveyances in the corporate name, lease real estate, settle or compromise claims, commence and prosecute all actions and proceedings necessary to enable liquidation, distribute assets either in cash or in kind among members according to their respective rights, after paying or adequately providing for the payment of liabilities, and do and perform all acts necessary or expedient to the winding up of the association. The board of directors has power to exchange or otherwise dispose of or place in trust all or any part of the assets upon such terms and conditions and for such considerations as may be deemed reasonable or expedient and may distribute such considerations among the members in proportion to their interest therein. In the absence of fraud, any determination of value made by said board of directors for any such purpose shall be conclusive

- (3) The association, during the liquidation of the assets of the association, shall be subject to the supervision of the commissioner, and shall pay such fees and assessments as are provided for in articles 40 to 46 of this title in the case of active associations and shall report the progress of such liquidation to the commissioner as he may require. Upon completion of liquidation, a final report and accounting of the affairs of the association shall be made to the commissioner. Upon the approval of such report by the commissioner, the board of directors, without the necessity of further action by the members of the association, shall proceed to dissolve such association in the manner provided by law in the case of general corporations.
- (4) Nothing in this section shall prejudice the rights of the commissioner to take possession of any association, under the authority vested in him by the provisions of section 11-44-110, upon determining that such procedure is to the best interest of the members.

HISTORY: Source: L. 39: p. 260, § 35.CSA: C. 25, § 98.CRS 53: § 122-2-31. C.R.S. 1963: § 122-2-31.

## 11-41-132. Escheat proceedings

- (1) If the affairs of an association have been voluntarily liquidated as provided in articles 40 to 46 of this title and any liquidating dividends remain unclaimed after the approval of the final report of liquidation, the trustees for liquidation may transfer such unclaimed liquidating dividends to the commissioner. In case of such transfer or in case an association has been liquidated by the commissioner and any liquidating dividends remain unclaimed six years after the approval of the final report of such liquidation, the commissioner may elect to pay such unclaimed liquidating dividends to the state treasurer.
- (2) Due notice of such election shall be given by publication once a week for four successive weeks in some newspaper of general circulation in the county in this state where the last principal place of business of such association was located. Within fifteen days after the first publication, the commissioner shall mail a copy of the notice to each person whose liquidating dividends are to be paid to the state treasurer at the last address appearing on the books of the association.
- (3) After thirty days from the date of the last publication, the commissioner shall pay to the state treasurer any such liquidating dividends in his possession, less the costs of publication and mailing, and shall file with the state treasurer the affidavit of publication by the publisher and the affidavit of mailing by the commissioner, showing the dates of such publications and mailing. The state shall be answerable for such funds, without interest, anytime within twenty-one years after the same have been paid into the treasury, to such persons as shall be legally entitled thereto. After the lapse of twenty-one years from the time any such moneys have been paid into the state treasury, no claim therefor having been made and established by any person entitled thereto, said moneys shall become the property of the state and shall be transferred to the general fund.
- (4) Payment to the state treasurer shall discharge the commissioner from any further liability or responsibility for such moneys.

HISTORY: Source: L. 51: p. 216, § 5.CSA: C. 25, § 99.CRS 53: § 122-2-32. C.R.S. 1963: § 122-2-32.

# 11-41-133. Acquisition of majority control over an existing association - definitions

- (1) As used in this section, unless the context otherwise requires:
- (a) "Entity" means a person or group of persons.
- (b) "Person" means an individual, corporation, partnership, trust, or similar organization.
- (c) An entity shall be deemed "to have control" of an association if said entity:
- (I) Directly or indirectly, or acting in concert with one or more persons, owns, controls, holds with the power to vote, or holds proxies representing more than twenty-five percent of the permanent stock of such association;
- (II) Controls in any manner the election of a majority of the directors of such association; or
- (III) Exercises a controlling influence over the management or policies of such association.
- (2) (a) Whenever an entity proposes to take an action or conduct an activity which would cause such entity to have control of that association, the entity shall first make application to the commissioner for a certificate of approval of such action or activity.
- (b) The application shall be in such form and provide such information as the commissioner may require by rule or regulation and

shall be accompanied when submitted by a nonrefundable filing fee in the amount established by the commissioner.

- (3) After receipt of an application, the commissioner shall make an investigation and shall issue the certificate of approval only after he has determined:
- (a) That the controlling entity is qualified by character, experience, and financial responsibility to control the association in a legal and proper manner; and
- (b) That the interests of the public generally will not be jeopardized by the proposed action or activity causing the entity to have control of the association.
- (4) This section shall not apply to the acquisition of:
- (a) Directors' voting proxies acquired in the normal course of business as a result of a proxy solicitation in conjunction with a stockholders' meeting;
- (b) Stock held in a fiduciary capacity unless the acquiring person has sole discretionary authority to exercise voting rights with respect thereto;
- (c) Stock acquired in securing or collecting a debt contracted in good faith; except that it shall apply two years after the date of acquisition; or
- (d) Stock acquired by an underwriter in good faith and without any intent to evade the purpose of this section if the shares are held only for such reasonable period of time as will permit the sale thereof.
- (5) When the commissioner has not acted upon a completed application within sixty days of receipt thereof, it shall be considered approved.
- (6) (a) A domestic association may, subject to any applicable regulations of the federal deposit insurance corporation or its successor, invest in an association that is domiciled or conducts its principal operations in another state and acquire control of such association, and notwithstanding any other provision of articles 40 to 46 of this title to the contrary, if the entity proposing to acquire control of a domestic association is a foreign association, the foreign association shall, in addition to submitting all information pertinent to the evaluation of the application under this section that the commissioner may require together with all applicable fees, meet the following criteria:
- (I) The foreign association seeking the acquisition shall have deposits that it may hold insured by the federal deposit insurance corporation or its successor in accordance with the provisions of section 11-41-117; and
- (II) The foreign association shall be in compliance with the capital requirements specified in this subparagraph (II) as follows:
- (A) and (B) (Deleted by amendment, L. 2004, p. 150, § 57, effective July 1, 2004.)
- (C) On and after January 1, 1993, the foreign association shall have a ratio of total capital to total assets of not less than six percent or the prevailing regulatory capital requirements established by the federal deposit insurance corporation or its successor, whichever is greater; and
- (II.5) Once a capital threshold is established in accordance with the provisions of subparagraph (II) of this paragraph (a) it shall be the prevailing standard for purposes of this section to be applied by the commissioner regardless of any reduction below the prevailing regulatory capital threshold requirement unless the general assembly authorizes the application of a lower standard; and
- (III) The commissioner shall not approve any application for acquisition under this subsection (6) if such acquisition would result in the foreign association controlling at the time of the acquisition more than twenty-five percent of the aggregate of all deposits in all banks, savings and loan associations, federal savings banks, and other financial institutions located in Colorado, which are federally insured. For the purposes of this subsection (6), deposits shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency; and
- (IV) Except as provided in paragraph (b) of this subsection (6), the foreign association shall be domiciled or conduct its principal operations in a state which is both contiguous to Colorado and which also has laws that allow a domestic association to establish business operations in that state under conditions which are determined by the commissioner to be not more restrictive than those provided in articles 40 to 46 of this title. For the purpose of this subsection (6), the place where an association "conducts its principal operations" means the place where the largest percentage of the aggregate deposits of the foreign association and all of its subsidiaries are held.
- (b) On or after January 1, 1991, a foreign association seeking to acquire control of a domestic association may be domiciled or have its principal offices in any state without regard to its proximity to this state and without regard to the statutory conditions required by subparagraph (IV) of paragraph (a) of this subsection (6).
- (c) Whenever a foreign association which meets the criteria established by this subsection (6) proposes to acquire control of a domestic association, the foreign association shall make an application for prior approval to the commissioner in such form and with such information that the commissioner shall require, and such application shall be accompanied by a nonrefundable filing fee in such amount as determined by the commissioner. Upon receipt of a properly submitted application to acquire control of a domestic association, the commissioner shall proceed to investigate the application in accordance with the provisions of this section. The commissioner shall not grant approval of the merger until he is satisfied that the criteria imposed by this section have been met

and that the acquisition is not contrary to the public interest.

- (d) No foreign association may acquire control of a domestic association except in accordance with the provisions of this section, and no such acquisition shall be completed without a certificate of approval issued by the commissioner.
- (e) A domestic association which is acquired in accordance with the provisions of this section may continue to operate as a domestic association subject to the provisions of articles 40 to 46 of this title. Any officer of a foreign association that acquires a domestic association pursuant to this section whose primary duty is managing the day-to-day operations of the Colorado offices of such foreign association shall be a resident of Colorado.

**HISTORY:** Source: L. 83: Entire section added, p. 489, § 2, effective April 26.L. 84: (2)(b) amended, p. 381, § 9, effective May 11.L. 88: (6) added, p. 459, § 4, effective July 1.L. 89: (2)(a), (3)(a), and (3)(b) amended, p. 611, § 5, effective April 19.L. 2004: IP(6)(a), (6)(a)(I), and (6)(a)(II)(A) to (6)(a)(II)(C) amended, p. 150, § 57, effective July 1.

Editor's note: In 2000, subsection (6)(a)(II)(D), enacted in 1988, was renumbered as subsection (6)(a)(II.5) on revision.

# 11-41-134. Indemnification and personal liability of directors, officers, employees, and agents - legislative declaration

- (1) The savings and loan association shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to corporations for profit as set forth in article 109 of title 7, C.R.S. Savings and loan association directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in article 109 of title 7, C.R.S. Savings and loan association directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section 7-108-402 (2), C.R.S., for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to stockholders for the purposes of this section.
- (2) (a) The general assembly hereby finds, determines, and declares that the following is enforceable and in conformity with the public policy of this state, as expressed in articles 40 to 46 of this title:
- (I) Any insurance policy, form, contract, endorsement, or certificate in effect or issued on or after April 30, 1993, which provides insurance coverage to directors or officers, or both, of a savings and loan association but which does not grant coverage or which excludes coverage for claims made by any depository insurance organization or any other state or federal corporation, organization, or entity acting as receiver, conservator, or liquidator of such savings and loan association, whether in its own name or in behalf of any other person or entity; or
- (II) Any fidelity bond, financial institution bond, or depository institution bond in effect or issued on or after April 30, 1993, that provides for termination of such bond upon the taking over of the savings and loan association by a receiver or other liquidator or by state or federal officials.
- (b) No provision of articles 40 to 46 of this title shall be construed to contravene or modify the expressed public policy set forth in this subsection (2).

HISTORY: Source: L. 87: Entire section added, p. 371, § 16, effective May 20.L. 93: Entire section amended, p. 620, § 4, effective April 30; (1) amended, p. 862, § 30, effective July 1, 1994.

Editor's note: Amendments to this section by House Bill 93-1154 and House Bill 93-1261 were harmonized.

## 11-42-101. Investment and savings shares

- (1) Every association may issue and sell an unlimited number of shares of the following types, as described in this section:
- (a) "Investment shares" are shares on which the full payment has been made and on which dividends shall be paid in cash.
- (b) "Savings shares" are shares on which an initial payment has been made, and upon which further payments are to be made at such times and in such amounts as are optional with the member, and on which dividends shall be credited unless otherwise agreed that all or part shall be paid in cash.
- (c) "Short-term savings shares" are shares which are to be withdrawn in less than twenty-four months from the date on which such share account is opened, or a share account established for the purpose of accumulating funds to pay taxes or insurance premiums, or both, in connection with a loan on the security of a lien on real estate. No association shall be required to distribute earnings on short-term savings shares.

**HISTORY:** Source: L. 33: pp. 312-317, § § 1-6.CSA: C. 25, § 19.L. 39: p. 248, § 19.L. 43: p. 202, § 4.CRS 53: § 122-3-1.L. 55: p. 761, § 5.L. 59: p. 659, § 2. C.R.S. 1963: § 122-3-1.

Cross references: For provisions regarding funeral contract trust funds, see article 15 of title 10; for provisions regarding the "Money Transmitters Act", see article 52 of title 12; for the "Unclaimed Property Act", see article 13 of title 38.

#### ANNOTATION

A certificate of deposit payable to the order of depositor on demand makes depositor a creditor of a savings and loan association, not a member. Dollar Bldg. Loan Ass'n v. Shields, 93 Colo. 480, 27 P.2d 485 (1933).

### 11-42-102. Preliminary requirements

Shares may be purchased and held absolutely by or in trust for any person, partnership, association, corporation, or trustee. Certificates shall be issued to each purchaser of shares at the time of making full or initial payment thereon, and at the same time share account books shall be issued to purchasers of savings shares.

**HISTORY:** Source: L. 33: pp. 312-317, § § 1-6.CSA: C. 25, § 19.L. 39: p. 248, § 19.L. 43: p. 202, § 4.CRS 53: § 122-3-2.L. 55: p. 761, § 6. C.R.S. 1963: § 122-3-2.

### 11-42-103. Contents of certificate - accounts

A share account shall be kept on the books of the association with each certificate holder showing the aggregate of all payments made, plus dividends paid in cash or credited. The aggregate of all payments made, plus dividends credited, less withdrawals, shall be termed the "certificate value" or "withdrawal value" of the account.

**HISTORY:** Source: L. 33: pp. 312-317, § § 1-6.CSA: C. 25, § 19.L. 39: p. 248, § 19.L. 43: p. 202, § 4.CRS 53: § 122-3-3.L. 55: p. 762, § 7. C.R.S. 1963: § 122-3-3.

#### ANNOTATION

A mutual association cannot contract as to maturity date of its stock. A mutual building and loan association has no power to contract with a shareholder that his stock will mature in a definite time. People's Bldg. Loan Ass'n v. Purdy, 20 Colo. App. 287, 78 P. 465 (1904).

## 11-42-104. Participating and limited dividend shares

Shares may be issued to participate fully or to a limited extent in the net earnings of the association if the articles of incorporation so provide, and such participation shall be specified in the body of the certificate. All shares participating fully in net earnings shall be entitled to an equal rate of dividend, if earned, as fixed by the board of directors. Shares participating to a limited extent shall be entitled to such rate of dividend, if earned, as fixed by the board of directors for the semiannual periods ending June thirtieth and December thirty-first of each year; but, if the rate is decreased, the shareholders thus affected shall be given written notice of the new rate, within thirty days after date of declaration, by mailing such notice to their last known addresses.

**HISTORY:** Source: L. 33: pp. 312-317, § § 1-6.CSA: C. 25, § 19.L. 39: p. 248, § 19.L. 43: p. 202, § 4.CRS 53: § 122-3-4.L. 55: p. 762, § 8. C.R.S. 1963: § 122-3-4.

#### ANNOTATION

Directors must act reasonably and honestly in declaring dividends. A holder of a certificate is entitled only to the face value of the certificate plus the regular dividend and such extra dividends as the directors, acting honestly and reasonably and not fraudulently or capriciously, declare. Midland Sav. Loan Co. v. Dunmire, 68 F.2d 249 (10th Cir. 1933).

### 11-42-105. Responsibility for losses - extent

The members of an association shall not be responsible for any losses which its invested capital is not sufficient to satisfy, except to the extent provided in sections 11-42-108 to 11-42-110, and the shares shall not be subject to assessment, nor shall certificate holders be liable for any unpaid installment on their shares. Except as provided in article 47 of this title, no preference between certificate holders shall be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of an association. Shareholders in mutual associations shall participate in the distribution of all assets, and in permanent stock associations they shall participate first, but only to the extent of their share investments.

**HISTORY:** Source: L. 33: pp. 312-317, § § 1-6.CSA: C. 25, § 19.L. 39: p. 248, § 19.L. 43: p. 202, § 4.CRS 53: § 122-3-5. C.R.S. 1963: § 122-3-5.L. 75: Entire section amended, p. 406, § 2, effective January 1, 1976.

### 11-42-106. Transfer of shares

Share certificates are transferable on the books of the association by the holder thereof, in person or by a duly authorized attorney, upon surrender of the certificate properly endorsed. The association may treat the holder of record thereof as the owner for all purposes without being affected by any notice to the contrary until the certificate is transferred on the books of the association. A transfer charge of not to exceed fifty cents may be charged for each certificate transferred on its books.

**HISTORY:** Source: L. 33: pp. 312-317, § § 1-6.CSA: C. 25, § 19.L. 39: p. 248, § 19.L. 43: p. 202, § 4.CRS 53: § 122-3-6.L. 55: p. 762, § 9. C.R.S. 1963: § 122-3-6.

### 11-42-107. Permanent stock

- (1) Permanent stock shall be of one class only, shall have the full voting rights, and shall have a par value of not less than one dollar per share; and the proceeds thereof, to the extent of such par value, shall be set apart, shall be nonwithdrawable, and shall be a reserve to absorb losses after all surplus, undivided profits, and other reserves available for losses have been depleted.
- (2) Any paid-in surplus may be made available for payment of organization and initial operating expenses, or may be credited to surplus, or to the contingent reserve, or to the federal insurance reserve, or may be transferred to permanent stock as a stock dividend and prorated to the holders of permanent stock. An association shall not issue permanent stock for a consideration other than cash or for a price less than the par value thereof, but, with the approval of the commissioner, stock may be issued for a consideration other than cash in connection with mergers, consolidations, or transfers, and, when fully paid, the stock shall be kept unimpaired to the extent of its par value.
- (3) An association may declare and distribute stock dividends from net earnings, or surplus, or undivided profits. With the prior consent of the commissioner, the stock of an association may be reduced by resolution of the board of directors approved by vote or written consent of the holders of a majority of the outstanding stock of such association to such amount as the commissioner shall approve, and any such reduction shall be credited to the contingent reserve account and shall not be available for dividends to stockholders or shareholders; but any reduction in the amount of permanent stock is subject to the provisions of this section and section 11-41-105 fixing minimum permanent stock requirements.
- (4) Except as may be required by the commissioner pursuant to section 11-41-105, no association shall be required to maintain permanent stock in excess of five hundred thousand dollars; however, the total amount of permanent stock subscribed to and paid for shall not at any time, until the maximum of five hundred thousand dollars has been reached, be less than at least the following percentages of the aggregate certificate value of the outstanding invested capital (excluding permanent stock) standing on the records of the association as of January 1 of the current year: Three percent on five million dollars; two percent on five million five hundred thousand dollars.
- (5) (a) As used in this subsection (5), the term "impaired" means a condition in which an association is unable to meet current obligations as they mature.
- (b) Cash dividends may be declared and paid on permanent stock unless an association is in an impaired condition or the payment thereof would cause the association's assets to be impaired. Nothing in this subsection (5) shall affect subsection (1) of this section, section 11-42-111 (1) or (7), or other provisions of articles 40 to 47 of this title, restricting the payment of dividends on permanent stock. Subject to the provisions of articles 40 to 47 of this title, permanent stock shall be entitled to such rate of dividends, if earned, as fixed by the board of directors.
- (c) Any association which intends to declare a cash dividend on permanent stock shall provide a minimum of thirty days' written notice of its intention to the commissioner
- (6) Directors' and stockholders' meetings shall be called, advertised, and held in accordance with section 11-41-123, but the holders of permanent stock shall have exclusive voting rights.

**HISTORY:** Source: L. 33: p. 317, § 1.CSA: C. 25, § 25.L. 43: p. 204, § 5.L. 51: p. 212, § 2.CRS 53: § 122-3-7.L. 55: p. 762, § 10.L. 59: p. 660, § 3.L. 61: p. 649, § 2. C.R.S. 1963: § 122-3-7.L. 83: (4) and (5) amended, p. 490, § 3, effective April 26.L. 85: (5)(c) added, p. 399, § 1, effective May 24.L. 2006: (4) amended, p. 1491, § 17, effective June 1.

### 11-42-108. Assessment to restore impaired permanent stock

- (1) Stockholders, after their stock has been fully paid, are not liable to creditors or for assessments upon their stock issued on or after July 1, 1981, except as provided by this section. If the commissioner, as a result of any examination or from any report made to him, finds that the permanent stock of any association is impaired, he shall notify the association that such impairment exists. In the event the amount of the impairment, as determined by the commissioner, is questioned by the association, then, upon application filed within ten days, the value of the assets in question shall be determined by appraisals made by independent appraisers acceptable to the commissioner and the association.
- (2) If the bylaws of an association expressly give the directors the authority to levy an assessment on permanent stock, then, subject to any limitations contained in the bylaws, the directors may levy and collect assessments upon permanent stock. The

directors of an association which has received such notice may levy a pro rata assessment upon the permanent stock thereof to make good such impairment and shall cause notice of the finding of the commissioner and such levy to be given in writing to each

stockholder of such association and the amount of assessment which the stockholder must pay for the purpose of making good such impairment; but, in lieu of making such assessment, the impairment may be made good, without the consent of the commissioner, by the reduction of the permanent stock in the manner provided in section 11-42-107.

**HISTORY:** Source: L. 33: p. 317, § 1.CSA: C. 25, § 25.L. 43: p. 204, § 5.L. 51: p. 212, § 2.CRS 53: § 122-3-8. C.R.S. 1963: § 122-3-8.L. 81: Entire section amended, p. 623, § 3, effective May 18.

#### **ANNOTATION**

Compliance with this section is mandatory. Upon notification that the capital of a savings and loan association is impaired, compliance with this statute is mandatory. Equity Sav. Loan Ass'n v. Great W. Mtgs., Inc., 31 Colo. App. 178, 501 P.2d 483 (1972).

The directors have two alternatives: They can question the amount of the impairment within 10 days of notification, or they can forego questioning the impairment and levy a pro rata assessment. Equity Sav. Loan Ass'n v. Great W. Mtgs., Inc., 31 Colo. App. 178, 501 P.2d 483 (1972).

## 11-42-109. Sale of delinquent stock

(1) If any stockholder refuses or neglects to pay the assessment specified in such notice within sixty days from the date of mailing, the directors of such association shall have the right to sell to the highest bidder at public auction any part or all of the stock necessary to pay the assessment of such stockholder, after giving a previous notice of such sale for ten days in a newspaper of general circulation published in the county where the principal office of such association in this state is located, and a copy of such notice of sale shall also be served on such stockholder by mailing a copy of the notice to his last known address ten days before the day fixed for such sale, or such stock may be sold at a private sale and without public notice; but, before making such private sale thereof, an offer in writing shall first be obtained and a copy thereof served upon the owner of record of the stock to be sold by mailing a copy of such offer to his last known address, and, if, after service of such offer, such owner still refuses or neglects to pay such assessment within thirty days from the time of the service of such offer, the directors may accept the offer and sell such stock to the person making such offer or to any other person making a larger offer than the amount named in the offer submitted to the stockholder, but such stock in no event shall be sold for less than the amount of such assessment so called for and the expense of the sale

(2) Out of the proceeds of the stock sold, the directors shall pay the amount of assessment levied thereon and the necessary cost of sale, and the balance, if any, shall be paid to the person whose stock has been sold. A sale of stock as provided in this section shall effect an absolute cancellation of the outstanding certificate evidencing the stock sold and shall make the same null and void, and a new certificate shall be issued by the association to the purchaser thereof.

**HISTORY:** Source: L. 33: p. 317, § 1.CSA: C. 25, § 25.L. 43: p. 204, § 5.L. 51: p. 212, § 2.CRS 53: § 122-3-9. C.R.S. 1963: § 122-3-9.

#### ANNOTATION

Shares may be sold of stockholder who refuses to pay assessment. Where a stockholder refuses to pay an assessment properly levied under this statute, the corporation can sell some of that stockholder's shares in order to raise the amount of the assessment. Equity Sav. Loan Ass'n v. Great W. Mtgs., Inc., 31 Colo. App. 178, 501 P.2d 483 (1972).

Issue of directors' negligence cannot be used as a defense to an assessment. The fact, if it be a fact, that the board of directors was negligent or acted improperly in causing the corporation to be in an impaired capital position did not constitute a basis for stopping the sale of stock of those stockholders who refused to pay the stock assessment, where the issue was not before the court, but rather is an issue which would be the basis of a separate independent action. Equity Sav. Loan Ass'n v. Great W. Mtgs., Inc., 31 Colo. App. 178, 501 P.2d 483 (1972).

## 11-42-110. Forfeiture of delinquent stock

- (1) If no bid or offer is received equal to or more than the amount of such assessment and the expense of sale, such stock shall be declared forfeited to the association and accepted in full satisfaction of such assessment, and such stock shall not be reissued except in accordance with a permit thereafter obtained from the commissioner pursuant to section 11-42-112.
- (2) The proceeds from any assessment, less the cost of any sales and any forfeiture of delinquent stock, shall be credited to the contingent reserve account.

**HISTORY:** Source: L. 33: p. 317, § 1.CSA: C. 25, § 25.L. 43: p. 204, § 5.L. 51: p. 212, § 2.CRS 53: § 122-3-10. C.R.S. 1963: § 122-3-10.

### 11-42-111. Reserves and distribution of earnings

- (1) Every association shall maintain general reserves for the sole purpose of meeting losses. Such reserves shall include the following: Permanent stock, federal insurance reserve, contingent reserve, state tax reserve, and any special purpose reserve established for the sole purpose of absorbing losses by action of the association's board of directors or at the request of the commissioner.
- (2) Repealed.
- (3) Every association shall set up and maintain a reserve, referred to in articles 40 to 46 of this title as the "contingent reserve", by transfers from net earnings on the closing date fixed for such associations as provided in articles 40 to 46 of this title.
- (4) Every association may set up and maintain a reserve, referred to in articles 40 to 46 of this title as the "state tax reserve" in accordance with article 2 of title 29 and articles 20 to 28 of title 39, C.R.S., by annual transfers from the contingent reserve. The state tax reserve shall be considered as a part of the contingent reserve.
- (5) Any losses may be charged against general reserves; except that losses may not be charged against permanent stock until all other reserves available for losses have been depleted. Moreover, losses may not be charged to the contingent reserve until any special reserve set up to absorb such losses has been exhausted. Any determined excess in any other reserve may be transferred to the contingent reserve. Allowance for depreciation of assets shall not be charged against general reserves but shall be charged to undivided profits, surplus, or net earnings.
- (6) As of each closing date fixed for such association as provided in articles 40 to 47 of this title, each association shall transfer to general reserves an amount which is not less than five percent of its net earnings until general reserves are equal to ten percent of invested capital (excluding permanent stock). If, after having reached ten percent, general reserves should fall below ten percent of invested capital (excluding permanent stock), credits of five percent of net income shall be resumed until general reserves shall again equal ten percent of invested capital (excluding permanent stock). General reserves may be increased over the required ten percent in any amount as may be determined by the board of directors to be for the best interest of the association. Notwithstanding the number of closing dates fixed for an association, not more than two such transfers shall be required annually, but more frequent transfers may be made by an association with the approval of the commissioner.
- (7) As of each closing date fixed for such association as provided in articles 40 to 47 of this title, the board of directors of each association shall declare a dividend on all share accounts, if any, that it then has and may also, from net earnings, declare a dividend on permanent stock in such association, but no association shall be required to distribute earnings on Christmas savings shares or deposits or other short-term savings shares or deposits or on share or deposit balances of less than an amount specified by the board of directors, if said amount is disclosed to shareholders or depositors in advance, including reasonable notice of changes. In lieu of or in addition to such net earnings, all or any part of undivided profits or surplus of an association may be likewise distributed, but no funds received as part of the sale price of permanent stock or paid in as an assessment shall be distributed as a cash dividend on permanent stock.
- (8) Dividends shall be declared on and pro rata to the certificate value of each share at the beginning of the dividend period, plus payments made thereon during the dividend period (less amounts withdrawn and, for purposes of participation in earnings, deducted from the latest previous payments), computed at the declared rate for the time invested, determined as provided in subsection (9) of this section.
- (9) The date of investment shall be the date of actual receipt of such payments by the association unless the board of directors fixes a date, not later than the tenth of the month, for determining the date of investment of payments on shares or designated classes thereof. Payments affected by such determination date, received by the association on or before such determination date, shall receive earnings as if invested on the first of such month.
- (10) Payments affected by such determination date, received subsequent to such determination date, shall receive earnings as if invested on the first of the next succeeding month.
- (11) In all mutual associations issuing limited dividend shares, no dividends shall be paid or credited on fully participating free shares until all current maximum dividends on limited dividend shares have been paid or credited and until at least an equal dividend has been credited to fully participating loan shares.
- (12) In permanent stock associations, no dividends shall be declared on the permanent stock until all current maximum dividends on limited dividend shares have been paid or credited.
- (13) With approval of the commissioner, associations may pay a variable rate of dividends on shares.
- (14) Notwithstanding any other provision of the Colorado "Savings and Loan Association Law", article 40 of this title, any association may distribute earnings on its shares on such other dates, on such other bases, and in accordance with such other terms and conditions as may from time to time be authorized by regulations made by the federal office of thrift supervision or its successor or the federal deposit insurance corporation or its successor for federal savings and loan associations when such regulations are approved by the commissioner.
- (15) A depreciation reserve, an unearned profits account, an interest due and uncollected account, and a bonus reserve shall be set up and maintained when required.

HISTORY: Source: L. 33: p. 364, § 26.CSA: C. 25, § 94.L. 39: p. 254, § 30.CRS 53: § 122-3-11.L. 59: p. 661, § 4. C.R.S. 1963: §

122-3-11.L. 72: p. 617, § 152.L. 73: p. 1237, § 4.L. 77: (7) amended, p. 572, § 2, effective June 4.L. 83: (6) and (7) amended, p. 491, § 4, effective April 26.L. 2004: (2) repealed and (14) amended, pp. 151, 138, § § 58, 19, effective July 1.

### 11-42-112. Requirements for sale of permanent stock

- (1) No association shall sell, offer for sale, negotiate for the sale of or take subscriptions for, or issue any of its permanent stock until it has first applied for and secured from the commissioner a permit authorizing it so to do. Such application shall be in writing, verified, and filed with the commissioner. In such application, the association shall set forth the names and addresses of its officers, the location of its office, an itemized account of its financial condition, the amount and character of its stock and shares, a copy of any prospectus or advertisement or other description of its stock to be distributed or published, a copy of all minutes of any proceedings of its directors, shareholders, or stockholders relating to or affecting the issue of such stock, and such additional information concerning the association, its condition, and its affairs as the commissioner may require. Upon the filing of such application, it shall be the duty of the commissioner to examine it and the other papers and documents filed therewith.
- (2) If he finds that the proposed issue is such as will not mislead the public as to the nature of the investment or will not work a fraud upon the purchaser thereof, the commissioner shall issue to the association a permit authorizing it to issue and dispose of its stock in such amounts as the commissioner may in such permit provide; otherwise he shall deny the application and notify the association in writing of his decision.
- (3) Every permit shall recite in bold type that the issuance thereof is permissive only and does not constitute a recommendation or endorsement of the stock permitted to be issued. The commissioner may impose conditions requiring the impoundment of the proceeds from the sale of such stock and limiting the expense in connection with the sale thereof and such other conditions as he may deem reasonable and necessary or advisable to insure the disposition of the proceeds from the sale of such stock in the manner and for the purposes provided in such permit. The commissioner from time to time may amend, alter, or revoke any permit issued by him or temporarily suspend the rights of such association under such permit. The commissioner has the power to establish such rules and regulations as may be reasonable or necessary to carry out the purposes and provisions of this section.

HISTORY: Source: L. 33: p. 318, § 2.CSA: C. 25, § 26.CRS 53: § 122-3-12. C.R.S. 1963: § 122-3-12.

### 11-42-113. Redemption of shares or stock

Every savings and loan association may redeem its shares or stock and repay the funds acquired thereby with such earnings as the same may be entitled to according to the terms of the issue thereof if the same are no longer required for the purposes of the association upon giving thirty days' written notice in the manner provided in the bylaws of the association, but the association cannot redeem permanent stock. The method of redemption shall be prescribed in the bylaws of the association.

HISTORY: Source: L. 33: p. 355, § 9.CSA: C. 25, § 77.CRS 53: § 122-3-13. C.R.S. 1963: § 122-3-13.

## 11-42-114. Bonus plan

- (1) Any association may adopt a plan for the payment of a cash bonus to members agreeing to make share investments in order to provide funds for the financing of homes. Such plan, before being adopted, shall be approved by a majority of the members of the board of directors at any regular or special meeting thereof and shall become effective upon the filing with and approval of the commissioner. The board of directors at any regular or special meeting may abolish the bonus plan as to shares purchased after the date of such action.
- (2) After adoption and approval of such bonus plan, the board of directors shall transfer out of net earnings to an account designated "bonus reserve" an amount which, together with existing credits to the bonus reserve, is sufficient to pay the bonus on all accounts then entitled to participation in the bonus reserve in accordance with the provisions of this section. The board of directors may transfer any excess in the bonus reserve to the undivided profits account.

**HISTORY:** Source: L. 33: p. 357, § 13.CSA: C. 25, § 81.L. 39: p. 254, § 29.CRS 53: § 122-3-14.L. 59: p. 664, § 5. C.R.S. 1963: § 122-3-14.

### 11-42-115. Power to issue shares to minors or in trust

- (1) Every association has the power to issue stock or shares to a minor of any age and either sex and receive payments thereon from, by, or for the minor. He shall be entitled to withdraw, transfer, or pledge any such shares owned by him and to receive from such association any dividends or other moneys at any time becoming due thereon in the same manner and subject to the same conditions as an adult, and his receipt or acquittance therefor shall constitute a valid release and discharge to the association for the payment of such moneys. The dealing of an association with a minor shall have the same effect upon the association's liability as if the minor were of full legal capacity, until his guardian or conservator files with the association a certified copy of the order of a Colorado court having jurisdiction appointing the guardian or conservator and directing otherwise.
- (2) Subject to such regulations as the board of directors of the association may prescribe, an association may contract with the

proper authorities of any public or nonpublic elementary or secondary school or any public or charitable institution caring for minors for the participation by the association in any school or institutional thrift or savings plan.

- (3) Every association has power to issue stock or shares to any person on a revocable trust for another person, who is either named in writing as beneficiary thereof or who is unnamed. At any time during the lifetime of the trustee, the stock or shares, together with dividends, if any, shall be withdrawn only by the trustee. On the death of the trustee, the stock or shares, together with dividends, if any, shall be paid to the person for whom the stock or shares were issued as designated beneficiary, even though the beneficiary is not of full legal capacity, and, if there is no designated beneficiary living at that time, then to the personal representative of the trustee.
- (4) The foregoing authorization shall not be construed as providing an exclusive method for a trustee to invest in stock or shares of an association. Nothing contained in this section shall be construed as limiting or repealing either section 28-5-214 or 28-5-301, C.R.S., with respect to investment of funds by guardians and conservators of minor and incompetent beneficiaries of the veterans administration, heretofore or hereafter appointed, or part 3 of article 1 of title 15, C.R.S., with respect to investments by fiduciaries.

**HISTORY:** Source: L. 33: p. 351, § 1.CSA: C. 25, § 69.CRS 53: § 122-3-15.L. 57: p. 652, § 1. C.R.S. 1963: § 122-3-15.L. 79: (1) amended, p. 647, § 3, effective July 1.L. 2002: (3) amended, p. 1359, § 7, effective July 1.

### 11-42-116. Joint accounts

Except as to accounts, which are defined in and which are paid as provided in article 15 of title 15, C.R.S., where shares or stock of an association is issued in the name of two or more persons or the survivors of them, such shares or stock and all dues paid on account thereof by either or any of such persons shall become the property of such persons as joint tenants, and the same, together with dividends, shall be held for the exclusive use of such persons and may be paid to either or any of them during their lifetimes or to the survivors of them after the death of one or more of them, and such payment and the receipt and acquittance of the persons to whom such payment is made shall be a valid and sufficient release and discharge to such association for all payments made on account of such shares or stock.

**HISTORY:** Source: L. 33: p. 351, § 2.CSA: C. 25, § 70.CRS 53: § 122-3-16. C.R.S. 1963: § 122-3-16.L. 73: p. 1649, § 14.L. 75: Entire section amended, p. 587, § 3, effective July 1.L. 90: Entire section amended, p. 920, § 4, effective July 1.

### 11-42-117. Notice of intention to withdraw

Each association may, at its option, prescribe a period or periods of notice of intention to withdraw. The period of any such notice of intention to withdraw shall not exceed sixty days. All notices of intention to withdraw shall be set forth and be a part of the bylaws of the association. All periods of notice of intention to withdraw shall be disclosed to members at the time of opening an account and shall appear on the shares as described in section 11-42-101. Each association may prescribe by its bylaws the terms and conditions of withdrawal which are not contrary to the provisions of articles 40 to 46 of this title. The shares shall state that the right of withdrawal is subject to the provisions of articles 40 to 46 of this title. This section shall not apply to tax and loan accounts, note accounts, or similar accounts when, subject to the regulations of the United States treasury, the association is serving as a depository for federal taxes or as a treasury tax and loan depository.

**HISTORY:** Source: L. 33: p. 319, § 1.CSA: C. 25, § 27.CRS 53: § 122-3-17. C.R.S. 1963: § 122-3-17.L. 79: Entire section amended, p. 432, § 8, effective June 19.L. 83: Entire section R&RE, p. 501, § 1, effective May 23.

### 11-42-118. Form of notice

Any notice of intention to withdraw shall be invalid unless it is given in writing and is signed by a member entitled to make a withdrawal.

**HISTORY:** Source: L. 33: p. 320, § 2.CSA: C. 25, § 28.CRS 53: § 122-3-18. C.R.S. 1963: § 122-3-18.L. 83: Entire section amended, p. 501, § 2, effective May 23.

## 11-42-119. Filing of notice

All notices of intention to withdraw shall be filed when received by each association in the order in which they are received, and each shall be kept on file with the exact time of the receipt thereof noted thereon, or recorded, until it is paid or cancelled at the written request of the member.

**HISTORY:** Source: L. 33: p. 320, § 3.CSA: C. 25, § 29.CRS 53: § 122-3-19. C.R.S. 1963: § 122-3-19.L. 83: Entire section amended, p. 501, § 3, effective May 23.

All notices of intention to withdraw shall be filed when received by each association in the order in which they are received, and each shall be kept on file with the exact time of the receipt thereof noted thereon, or recorded, until it is paid or cancelled at the written request of the member.

**HISTORY:** Source: L. 33: p. 320, § 3.CSA: C. 25, § 29.CRS 53: § 122-3-19. C.R.S. 1963: § 122-3-19.L. 83: Entire section amended, p. 501, § 3, effective May 23.

### 11-42-120. Shares or account not withdrawable

No member whose shares are pledged or whose account is pledged as security for a real estate loan from the association issuing such shares or accepting such account shall be permitted to make a withdrawal or be entitled to give any valid notice of intention to withdraw in respect of such shares or account until the indebtedness for which such shares are pledged or for which such account is pledged as security has been fully paid; except that withdrawals may be made without notice if the full amount of such withdrawals is used to pay such indebtedness or any part thereof.

**HISTORY:** Source: L. 33: p. 320, § 4.CSA: C. 25, § 30.CRS 53: § 122-3-20. C.R.S. 1963: § 122-3-20.L. 83: Entire section amended, p. 502, § 4, effective May 23.

### 11-42-121. Payment of withdrawals

- (1) In case the funds of an association applicable to withdrawals are not sufficient to pay off all members desiring to withdraw, such members may be paid off in either one of two methods, dependent upon which method the board of directors of the association may desire to follow, in full in the order in which withdrawal notices are filed or on a pro rata basis, as follows:
- (a) In the event an association elects to pay withdrawals in full in the order in which withdrawal notices are filed, all notices of withdrawal shall be filed in writing in order of time in which filed, and shall be kept in numerical order and so numbered, and shall be paid in the order filed as funds are available for that purpose.
- (b) As to associations which elect to pay withdrawals on a pro rata basis, all shares or accounts on which notices of withdrawal have been filed during any period of notice shall receive their pro rata share of the funds available for withdrawal at the end of such notice period, based upon the withdrawal value of the shares or account at the time distribution is made.
- (c) Repealed.
- (2) Notice of withdrawal shall not make such withdrawing member a creditor of the association.
- (3) As to all shares on which a withdrawal notice is on file, the holder thereof shall be entitled to the same rate of dividends paid like shares not on withdrawal.
- (4) In all cases, withdrawals shall be governed by the bylaws of the association insofar as such bylaws are not in conflict with the provisions of articles 40 to 46 of this title.

**HISTORY:** Source: L. 33: p. 321, § 5.CSA: C. 25, § 30.CRS 53: § 122-3-20. C.R.S. 1963: § 122-3-20.L. 83: IP(1), (1)(a), (1)(b), and (2) amended and (1)(c) repealed, pp. 502, 503, § § 5, 7, effective May 23.

### 11-42-122. Limitation on withdrawals

- (1) If an association has on file more withdrawal requests than can be met in full from current funds, the association shall apply to such withdrawals one-half of the monthly receipts, after first deducting the amount necessary to pay the actual and reasonable expenses incurred in the operation of the association and the protection of its assets and reserves set up by it for cash dividends on its shares; except that, should such one-half fail to retire at least five percent of the aggregate withdrawal requests, such portion of the other one-half shall be applied as shall be necessary to retire five percent of the total amount on withdrawal.
- (2) "Receipts", as used in this section, means all funds coming into the hands of the association except borrowed money.

HISTORY: Source: L. 33: p. 322, § 6.CSA: C. 25, § 32.CRS 53: § 122-3-22. C.R.S. 1963: § 122-3-22.

Editor's note: Subsections within this section were renumbered on revision to conform to statutory numbering format.

#### ANNOTATION

Annotator's note. Cases relevant to § 11-42-122, which were decided prior to its earliest source, L. 33, p. 322, § 6, have been included in the annotations to this section.

Withdrawals are payable in the order filed and, under the limitations of this section, a late comer may be refused payment for the time being. Hawley v. North Side Bldg. & Loan Ass'n, 11 Colo. App. 93, 52 P. 408 (1898).

Members have no priority. Certificates providing that the holder is a member of the association can have no priority in withdrawals. Exch. Nat'l Bank v. Receivers of City Sav. Bldg. & Loan Ass'n, 95 Colo. 498, 37 P.2d 394 (1934).

Offer to pay less than sum due constitutes refusal to pay and authorizes suit. Under this section, an offer by a building and loan association to pay to a withdrawing member a lesser sum than he is legally entitled to at the time his notice of withdrawal is complete is such a refusal to pay the sum actually owing, as would authorize the institution of a suit to compel payment. Enter. Bldg. & Loan Soc'y v. Bolin, 12 Colo. App. 304, 55 P. 740 (1898).

Section inapplicable to payment of a certificate of deposit. Dollar Bldg. & Loan Ass'n v. Shields, 93 Colo. 480, 27 P.2d 485 (1933).

#### 11-42-123. Matured shares

If, at the time shares in a savings and loan association have matured, the association has withdrawal notices on file to such an extent that the funds of the association, applicable to withdrawals, are not sufficient to pay off all shareholders desiring to withdraw, as well as shares which have matured and are unpaid, and the holder of the matured shares desires to withdraw, he shall file a notice of intention to withdraw and thereafter be subject to all the rights and liabilities of articles 40 to 46 of this title governing withdrawing shareholders; except that he shall be entitled to the full amount of any dividends declared on like shares during the time he has a withdrawal notice on file on same.

HISTORY: Source: L. 33: p. 323, § 7.CSA: C. 25, § 33.CRS 53: § 122-3-23. C.R.S. 1963: § 122-3-23.

#### 11-42-124. Applicable to previously issued certificates

All stock or shares or certificates or instruments of whatsoever kind issued by savings and loan associations prior to June 8, 1933, evidencing savings in said associations by the holders thereof, except permanent or nonwithdrawable stock, shall be subject to all the rights and all the liabilities of articles 40 to 46 of this title, and such holders shall be treated as shareholders.

HISTORY: Source: L. 33: p. 323, § 8.CSA: C. 25, § 34.CRS 53: § 122-3-24. C.R.S. 1963: § 122-3-24.

### 11-42-125. Associations authorized to accept deposit accounts

- (1) Any other provision of articles 40 to 46 of this title to the contrary notwithstanding, any association organized under articles 40 to 46 of this title may be organized as, or may convert to, an association authorized to accept savings deposits. No association shall accept savings deposits of the type provided for by this section unless its articles of incorporation and bylaws shall specifically provide, or have been amended to provide, for the acceptance of such deposits. For the purposes of this section, all associations authorized to accept savings deposits shall be referred to as "deposit associations", and other associations organized under articles 40 to 46 of this title shall be referred to as "share associations".
- (2) Except as provided in this section, no deposit association shall issue or sell shares, as otherwise provided in articles 40 to 46 of this title, except permanent stock in the case of associations organized as permanent stock companies; but all shares issued and outstanding at the time an association converts to a deposit association shall retain their status as shares with the same relative rights, privileges, duties, and obligations otherwise applicable to shares in a share association, unless the holders thereof exchange or convert such shares to savings deposits. If any law, rule, regulation, order, or decision regulating federal savings and loan associations hereafter authorizes federal savings and loan associations to accept both savings accounts, other than savings deposits (or issue and sell shares), and savings deposits having substantially the same characteristics as deposits permitted by this section, the commissioner, by rules and regulations duly adopted, may authorize deposit associations to issue shares or accept accounts having the same relative rights and other characteristics permitted by such federal law, rule, regulation, decision, or order, subject to the same limitations, restrictions, prohibitions, conditions, and provisions, to the extent found by the commissioner to be applicable, as are provided from time to time by such federal laws, rules, regulations, decisions, or orders.
- (3) Except as otherwise specifically provided in this section and except to the extent that such construction clearly would be inconsistent with the provisions and intent of articles 40 to 46 of this title, all references in articles 40 to 46 of this title (other than in this section) to shares or share accounts and to the owners or holders of shares or share accounts or to shareholders shall, with respect to the savings deposits authorized by this section, be applicable in the same manner and to the same extent that they would be applicable if such savings deposits were share interests in the association, and, except as provided in this section, the relationships between a deposit association and the holders of savings deposits therein shall be the same, and they shall have or be subject to the same rights, privileges, options, discretions, duties, obligations, restrictions, limitations, prohibitions, and conditions, as if the savings deposits were shares or the depositors were shareholders in a share association, including, but without limitation, the right of savings deposit holders to be members of the association and to have voting rights therein and the right of such associations to issue accounts to minors or in trust, to issue joint accounts, to adopt bonus plans, to issue permanent stock, and to otherwise conduct their operations in the manner provided by the provisions of articles 40 to 46 of this title.
- (4) Notwithstanding any other provisions of articles 40 to 46 of this title, in the event of voluntary or involuntary liquidation, dissolution, or winding up of a deposit association or in the event of any other situation in which the priority of savings deposits authorized by this section is in controversy, all savings deposits, to the extent of their certificate value or withdrawal value at the time of the determination of priority, shall be deemed debts of the association, having the same priority as the claims of all general

creditors of the association who do not have priority, other than any priority arising or resulting from consensual subordination, over other general creditors of the association, and, in addition, such savings deposits shall have the same right to share in the remaining assets of the association that they would have had if they were shares of such association. If, at the time of the determination of priority, there are outstanding in a deposit association any shares or share accounts in the association, such shares or share accounts shall, to the extent of their certificate value or withdrawal value, have the same priority as against other creditors or claimants as if they were savings deposits.

- (5) The provisions of sections 11-42-117 to 11-42-123 shall be applicable to savings deposits, but any deposit association which fails to make full payment on any withdrawal demand within ten days after expiration of any advance notice period prescribed by the association's bylaws and permitted by articles 40 to 46 of this title may be found by the commissioner to be conducting its business in an unsafe or unauthorized manner or to be in an unsafe condition and subject to the penalties or actions resulting from such findings, including, but without limitation, the actions prescribed by sections 11-44-110 and 11-44-116.
- (6) The provisions of sections 11-41-131 and 11-44-116 respecting the voluntary and involuntary liquidation of an association shall apply to all deposit associations, except to the extent that the order of priority of payment as between the claims of creditors, holders of savings deposits, shareholders, holders of permanent stock, or other investors is changed by the provisions of this section
- (7) If the laws, rules, regulations, orders, or decisions applicable to federal savings and loan associations hereafter authorize federal savings and loan associations to pay or contract to pay interest at an agreed rate on deposits or on one or more classes of deposits, then, deposit associations organized and operating under articles 40 to 46 of this title may likewise pay or contract to pay interest, subject to such restrictions, limitations, prohibitions, conditions, and requirements as the commissioner, by rules and regulations duly adopted and applicable to all deposit associations, may prescribe.
- (8) In order to achieve substantial equality between deposit associations operating pursuant to the provisions of this section and federal savings and loan associations authorized to accept savings deposits, the commissioner is authorized, by rule or regulation duly adopted, to impose or grant, to the extent consistent with the provisions of articles 40 to 46 of this title, the same restrictions, limitations, prohibitions, conditions, requirements, duties, liabilities, provisions, authorities, powers, rights, options, and discretions as are from time to time applicable to federal savings and loan deposit associations under the laws, rules, regulations, orders, and decisions applicable to such federal savings and loan associations.
- (9) Savings deposits in a deposit association shall be evidenced by such certificates, account books, or passbooks as the association could issue or would be required to issue for a corresponding share account if it were not a deposit association; but any such certificate, account book, or passbook shall be modified so as to clearly reveal that the interest or obligation evidenced thereby is a savings deposit and not a share or share account in the issuing association. The term "invested capital", as applied to a deposit association, shall include the certificate values of all savings deposits therein. A deposit association may accept such one or more types of savings deposits as are permitted by the bylaws of the association, if such deposits are of a type and kind that may be accepted by savings and loan associations insured by the federal deposit insurance corporation or its successor.
- (10) Any provision to the contrary notwithstanding, all shares or accounts in a federal or state chartered savings and loan association having substantially the same relative rights and characteristics as either shares or savings deposits provided for by this section, whether described or referred to as shares, savings shares, investment shares, share accounts, certificates, certificate accounts, savings accounts, savings deposits, or any other similar name, are the equivalent of each other for all purposes involving the right or authority to invest or deposit public or private funds, including funds held in trust or any other fiduciary capacity, in any such association; and, if, by any law, statute, ordinance, resolution, rule, regulation, order, decision, agreement, declaration, trust agreement, last will and testament, or other similar enactment or instrument, the state of Colorado or any of its counties, municipalities, districts, or other political subdivisions, including special districts authorized by law, any institution, agency, official, instrumentality, or department of any of the political entities described in this subsection (10), any bank, savings bank, credit union, fraternal benefit society, trust deposit and security company, trust company, or other financial institution, any insurance company, or any agent, executor, administrator, trustee, custodian, or other fiduciary or agent, including trustees or custodians of public or private pension or retirement funds, is authorized or required to invest or deposit such public or private funds in the shares of a federal or state chartered savings and loan association or in any one or more of the other types of savings and loan accounts named in this subsection (10), such funds may also be invested or deposited in any one or more of the other types of accounts specified in this subsection (10) in such an association, whether the earnings to be paid on such accounts are in the form of dividends or of interest.

**HISTORY:** Source: L. 69: p. 1017, § 12. C.R.S. 1963: § 122-3-25.L. 83: (5) amended, p. 502, § 6, effective May 23.L. 2004: (9) amended, p. 151, § 59, effective July 1.L. 2013: (10) amended, (SB 13-154), ch. 282, p. 1471, § 29, effective July 1.

#### 11-43-101. Restrictions on foreign associations

No foreign savings and loan association which conducts a savings and loan business as defined in section 11-40-103 shall operate an office in this state in order to sell its shares or accounts or make new loans in this state. Violation of this section is a class 2 misdemeanor which shall subject the offender and its officers, agents, and representatives, upon conviction thereof, to the penalties which are authorized in section 18-1.3-501 (1), C.R.S., and each separate business transaction in violation of this section shall constitute a separate offense; but nothing in this section shall be construed to prohibit a foreign association from transacting business in respect to executory contracts in force on May 17, 1939.

**HISTORY:** Source: L. 33: p. 324, § 1.CSA: C. 25, § 35.L. 39: p. 242, § 15.CRS 53: § 122-4-1. C.R.S. 1963: § 122-4-1.L. 88: Entire section amended, p. 455, § 2, effective March 18.L. 2002: Entire section amended, p. 1471, § 40, effective October 1.

Cross references: For provisions regarding funeral contract trust funds, see article 15 of title 10; for provisions regarding the "Money Transmitters Act", see article 52 of title 12; for the "Unclaimed Property Act", see article 13 of title 38.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

#### ANNOTATION

Law reviews. For article, "Foreign Savings and Loan Associations Not Doing Business in Colorado", see 16 Colo. Law. 43 (1987).

Section applies to a foreign corporation, authorized by its charter to raise a fund by small periodical payments from which loans may be made to those who contributed to such funds, and which is conducting a business of this character, even though not technically a building and loan association. People ex rel. Griffith v. Standard Home Co., 59 Colo. 355, 148 P. 869 (1915) (decided prior to L. 33, p. 324, § 1, the earliest source of this section).

This section is a "doing business law". Even though this section regulates foreign savings and loan associations by prohibitions rather than by conditions, it is still a "doing business law". In addition, imposition of criminal sanctions, such as those in this section, is not atypical of a "doing business law". Title Ins. Co. of Minn. v. Am. Sav. Loan Assn., 866 F.2d 1284 (10th Cir. 1989).

#### 11-44-101. Division of financial services created

There is hereby created a division of financial services, within the department of regulatory agencies, which shall be administered by the state commissioner of financial services. When any law of this state refers to the savings and loan department of the state of Colorado, said law shall be construed as referring to the division of financial services.

**HISTORY:** Source: L. 33: p. 331, § 1.CSA: C. 25, § 47.CRS 53: § 122-6-1. C.R.S. 1963: § 122-5-1.L. 68: p. 125, § 126.L. 89: Entire section amended, p. 616, § 1, effective July 1.

Cross references: For provisions regarding funeral contract trust funds, see article 15 of title 10; for provisions regarding the "Money Transmitters Act", see article 52 of title 12; for the "Unclaimed Property Act", see article 13 of title 38.

#### ANNOTATION

Law reviews. For comment on United States Bldg. Loan Ass'n v. McClelland, appearing below, see 7 Rocky Mt. L. Rev. 156 (1935).

This is a comprehensive article creating a building and loan department of the state, defining its powers, and giving it supervision over all foreign and domestic building and loan corporations doing business in this state, with power to grant certificates of business. United States Bldg. Loan Ass'n v. McClelland, 6 F. Supp. 299 (D. Colo. 1934).

It is a valid legislative enactment. Building and loan associations exercise quasi-banking functions, soliciting the savings and funds of the public, especially of those in more modest circumstances. The general assembly violates no constitutional guaranty in declaring them affected with a public interest and in providing, within proper limits, supervision and control for the protection of the investor. United States Bldg. Loan Ass'n v. McClelland, 6 F. Supp. 299 (D. Colo. 1934).

#### 11-44-101.4. Definitions

As used in articles 30 and 40 to 46 of this title, unless the context otherwise requires, "board" means the financial services board, created in section 11-44-101.6.

HISTORY: Source: L. 93: Entire section added, p. 1447, § 9, effective June 6.

#### 11-44-101.5. Division subject to termination - repeal of article

- (1) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of financial services created by section 11-44-101.
- (2) This article is repealed, effective September 1, 2024.

HISTORY: Source: L. 76: Entire section added, p. 621, § 4, effective July 1.L. 89: Entire section amended, p. 616, § 2, effective July 1.L. 91: Entire section amended, p. 678, § 6, effective April 20.L. 94: (2) amended, p. 66, § 9, effective July 1.L. 2004: (2) amended, p. 138, § 20, effective July 1.L. 2013: (2) amended, (SB 13-159), ch. 193, p. 790, § 1, effective May 11.

#### 11-44-101.6. Financial services board - creation

- (1) There is hereby established in the division the financial services board which shall consist of five members.
- (2) (a) There shall be three members who during their tenure are, and shall remain, executive officers of state credit unions and shall have not less than five years' practical experience as an active executive officer of a credit union.
- (b) There shall be one member who during such member's tenure is, and shall remain, the executive officer of a state savings and loan association and shall have not less than five years' practical experience as an active executive officer of a savings and loan association.
- (c) There shall also be one member to serve as a public member of the board who shall have expertise in finance through current experience in business, industry, agriculture, or education.
- (d) Not more than three members shall be of the same major political party. No member of the board shall have any interest, direct or indirect, in a financial institution in which another member of the board shall have any such interest.
- (3) Members shall be appointed by the governor, with the consent of the senate. Appointments shall take effect on July 1, 1993. The term of office of each member shall be four years with the exception of the first appointments wherein two members shall be appointed for a two-year term to effect the staggering of terms. The governor may, after notice and hearing, remove a member for cause. Any board member who is absent from three consecutive board meetings is subject to immediate removal by the governor.
- (4) Each member of the board shall receive the same per diem compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all such expenses and allowances shall be made upon vouchers therefor, which shall be filed with the department of personnel.
- (5) The board shall meet at least once every three months. The chair of the board may call additional meetings of the board upon at least seventy-two hours' notice to all members of the board and shall do so upon the request of two members. All members of the board shall be subject to immediate call in the event of an emergency. Three members of the board shall constitute a quorum, and action taken by a majority of those present at any meeting at which a quorum is present shall be the action of the board. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, one or more members may be authorized to conduct any hearing required under articles 30 and 40 to 46 of this title. In the event that less than a quorum of the board is present during the conduct of the hearing, at least a quorum of the board shall read the entire record before voting

thereon. No member who is, or was at any time in the preceding twelve months, a director, officer, partner, employee, member, or stockholder of a corporation, partnership, or unincorporated association which is a party to a proceeding before the board shall participate in such a proceeding. A member may disqualify himself or herself from participating in a proceeding for any other cause deemed by the member to be sufficient.

- (6) A quorum may be established by means of a conference telephone call which shall be recorded in the board's minutes. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, the board may hold an executive session to consider certain matters required by statute to be kept confidential under articles 30 and 40 to 46 of this title. Any agenda and the minutes of executive sessions shall be kept confidential by the board.
- (7) Such clerical, technical, and legal assistance as the board may require shall be provided by the division.
- (8) The members of the board shall, before entering upon the discharge of their duties, in addition to any oath required by the state constitution, take and subscribe an oath to keep secret all information acquired by them in the discharge of their duties, except as may be otherwise required by law. Any person who willfully violates this oath is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.
- (9) The board shall elect a chair from among its members to serve for a term not exceeding two years, as determined by the board. No chair shall be eligible to serve as such for more than two successive terms. In addition to the amounts received pursuant to subsection (4) of this section, the chair shall receive per diem compensation and reimbursement of expenses in the amounts provided by section 24-34-102 (13), C.R.S., for each day spent in attending to the duties of the board.
- (10) For the fiscal year beginning July 1, 1993, all moneys necessary to fund the board, including but not limited to per diem compensation and reimbursement of expenses for board members, shall be transferred from the moneys allocated for travel expenses for the division.

**HISTORY:** Source: L. 93: Entire section added, p. 1447, § 9, effective June 6.L. 95: (4) amended, p. 637, § 20, effective July 1.L. 96: (4) amended, p. 1513, § 40, effective June 1.

## 11-44-107. Confidentiality

- (1) The board is the policy-making and rule-making authority for the division and has the power to:
- (a) Regulate its own procedure and practice; and
- (b) Make, modify, reverse, and vacate rules for the proper enforcement and administration of articles 30 and 40 to 46 of this title and article 13 of title 12, C.R.S.
- (2) In addition to any other powers conferred on it by articles 30 and 40 to 46 of this title, the board has the power to:
- (a) Make all final decisions with respect to the organization, conversion, or merger of credit unions and savings and loan associations and administration of life care institutions or providers pursuant to article 13 of title 12, C.R.S.;
- (b) Make all final decisions with respect to the suspension or liquidation of credit unions and savings and loan associations under article 30 of this title and this article.
- (c) (Deleted by amendment, L. 95, p. 1092, § 3, effective May 31, 1995.)

- (3) The board has the power to:
- (a) Prohibit the taking of shares or deposits or to restrict the withdrawal of shares or deposits, or both, from any one or more state credit unions or savings and loan associations when the board finds that extraordinary circumstances make such a restriction necessary for the proper protection of depositors in the affected state credit union or savings and loan association;
- (b) Authorize state credit unions and savings and loan associations to engage in any activity in which such financial institutions could engage were they operating under a federal charter or certificate of approval at the time such authority is granted, so long as such activity is not prohibited by state law and to the extent permissible under the rules and regulations of the board;
- (c) Affirm, modify, reverse, vacate, or stay the enforcement of any order, ruling, or determination made by the commissioner acting pursuant to authority delegated by the board;
- (d) Issue a declaratory order with respect to the applicability of article 13 of title 12, C.R.S., articles 30 and 40 to 46 of this title, or any rule and regulation issued by the board to any person, property, or state of facts under said provisions;
- (e) Review and comment on the preliminary budget draft for the division prior to its submission to the department of regulatory agencies;
- (f) Annually establish such fees and assessments and the percentages thereof as are necessary to generate the moneys appropriated by the general assembly to the division;
- (g) Comment to the executive director of the department of regulatory agencies on who shall be the commissioner and to recommend to said executive director the termination of the commissioner for cause;
- (h) Perform any acts and make any decisions incidental to or necessary for carrying out its functions as set forth in article 13 of title 12, C.R.S., and articles 30 and 40 to 46 of this title;
- (i) Issue subpoenas and require attendance of any and all officers, directors, and employees of any credit union, savings and loan association, or life care institution or provider, and such other witnesses as the board may deem necessary in relation to its affairs, transactions, and conditions, and may require such witnesses to appear and answer such questions as may be put to them by the board, and may require such witnesses to produce such books, papers, or documents in their possession as may be required by the board. Upon application of the board and subject to any protective order which may be entered by a district court, any person served with a subpoena issued by the board may be required, by order of the district court of the county where the credit union, savings and loan association, or life care institution or provider has its principal office, to appear and answer such questions as may be put to such person by the board and be required to produce such books, papers, or documents in such person's possession as may be required by the board.
- (4) The board may issue cease-and-desist orders, suspend a director, officer, or employee of a credit union or savings and loan association, or assess civil money penalties, in the same manner as provided in section 11-30-106 (7) and (8), concerning powers of the commissioner, and section 11-44-106.5, concerning suspension or removal of directors, officers, or employees, and as provided in sections 11-30-106.5 and 11-44-123, concerning assessment of civil money penalties by the commissioner.
- (5) Except with respect to the organization of community charter credit unions, the board may, in its discretion, delegate to the commissioner any of its powers, duties, and functions.
- (6) The board may, in its discretion, require the commissioner to report to the board periodically with respect to any powers delegated pursuant to subsection (5) of this section.
- (7) The board shall have the power to approve or deny merger agreements for credit unions as provided in section 11-30-122. Mergers involving a community charter shall be subject to a public hearing pursuant to

#### 101.7.

(8) Repealed.

**HISTORY:** Source: L. 93: Entire section added, p. 1449, § 9, effective June 6.L. 94: (3)(b) amended and (8) repealed, pp. 66, 67, § § 10, 11, effective July 1.L. 95: (2)(a), (2)(c), (3)(d), and (3)(h) amended, p. 1092, § 3, effective May 31.L. 99: (1) amended, p. 1011, § 4, effective August 4.L. 2013: (3)(i) amended, (SB 13-159), ch. 193, p. 791, § 5, effective May 11.

# 11-44-101.8. Review of commissioner actions by financial services board - judicial review

- (1) (a) Any credit union, savings and loan association, or life care institution or provider, or any officer, director, employee, agent, advisor, or volunteer thereof, may appeal to the board any actions taken pursuant to authority delegated by the board pursuant to section 11-44-101.7 (5) or as otherwise specifically provided by statute. Notice of such appeal shall be filed with the commissioner within thirty days after such findings, ruling, order, decision, or other action. Such notice shall contain a brief statement of the pertinent facts upon which such appeal is based. Within sixty days after the appeal is filed, the board shall fix a date, time, and place for hearing the appeal and shall notify the credit union, savings and loan association, or life care institution or provider at least thirty days prior to the date of said hearing. Any such action of the commissioner may be stayed by the board pending the appeal to the board. The findings, order, decision, ruling, or other action of the board shall be deemed final agency action.
- (b) In extraordinary circumstances, upon order of the board, any hearing conducted pursuant to paragraph (a) of this subsection (1) shall be exempt from any provision of law requiring that proceedings of the board be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from an institution.
- (2) Any credit union, savings and loan association, or life care institution or provider, or any officer, director, employee, agent, advisor, or volunteer thereof, or any other party, aggrieved or directly affected by a final order of the board, may obtain judicial review thereof by filing an action for review pursuant to the provisions of section 24-4-106, C.R.S., with the Colorado court of appeals pursuant to section 24-4-106 (11), C.R.S. The commencement of such proceeding does not, unless specifically ordered by the court, operate as a stay of the board's ruling, order, decision, or other action.

**HISTORY:** Source: L. 93: Entire section added, p. 1451, § 9, effective June 6.L. 94: (2) amended, p. 67, § 12, effective July 1.L. 95: (2) amended, p. 1092, § 4, effective May 31.L. 97: (2) amended, p. 8, § 1, effective March 13.L. 99: (1) amended, p. 1011, § 5, effective August 4.L. 2004: (1)(a) amended, p. 138, § 21, effective July 1.

### 11-44-102. Commissioner - duties - employees

- (1) The head of the division of financial services shall be the state commissioner of financial services, referred to in this article as the "commissioner". The commissioner shall have had at least five years' practical experience in the operation or regulation of financial institutions or financial service operations. The commissioner shall be appointed by the executive director of the department of regulatory agencies, pursuant to section 13 of article XII of the state constitution.
- (2) The commissioner may appoint, pursuant to section 13 of article XII of the state constitution, a deputy commissioner of financial services, a secretary, and such other employees as deemed necessary for the proper conduct of the division.

- (3) The deputy commissioner, the secretary, and all other employees of the division shall be under the direct supervision of the commissioner who shall have full power and control over such employees. Neither the commissioner nor any officer or employee of the division shall be personally liable for any acts done in good faith while in the performance of his duties as prescribed by law.
- (4) Repealed.
- (5) (Deleted by amendment, L. 2004, p. 138, § 22, effective July 1, 2004.)
- (6) The commissioner, the deputy commissioner, the secretary, and all employees shall be reimbursed for all necessary expenses of their office, including all traveling expenses necessarily incurred in the performance of their duties, upon vouchers therefor properly itemized and filed in accordance with law.
- (7) Repealed.
- (8) (a) Neither the commissioner nor any employee of the division shall:
- (I) Be an officer, director, committee member, attorney for, or stockholder in any credit union or savings and loan association; or
- (II) Receive, directly or indirectly, any payment, gratuity, or compensation from any institution over which the division has regulatory authority.
- (b) The provisions of paragraph (a) of this subsection (8) shall not prohibit the commissioner or any employee of the division from being a depositor, account holder, borrower, or user of other available financial services on the same terms as are available to the general public or membership.
- (c) Notwithstanding any provision of this subsection (8) to the contrary, this subsection (8) shall not prohibit the credit union or savings and loan members of the financial services board pursuant to section 11-44-101.6 (2) (a) or (2) (b) from:
- (I) Being executive officers in credit unions or savings and loan associations; and
- (II) Receiving bona fide compensation as such officers.

**HISTORY:** Source: L. 33: p. 332, § 2.CSA: C. 25, § 48.L. 43: p. 207, § 6.L. 47: p. 315, § 1.CRS 53: § 122-6-2. C.R.S. 1963: § 122-5-2.L. 68: p. 125, § 127.L. 89: (1), (2), and (4) amended, p. 616, § 3, effective July 1.L. 91: (7) added, p. 674, § 3, effective May 1.L. 2004: (1), (2), and (5) amended and (8) added, p. 138, § 22, effective July 1.L. 2013: (4) repealed, (SB 13-159), ch. 193, p. 791, § 6, effective May 11.

Editor's note: Subsection (7)(b) provided for the repeal of subsection (7), effective January 1, 1992. (See L. 91, p. 674.)

#### 11-44-103. Powers of commissioner

The commissioner has general supervision and control over all domestic and foreign savings and loan associations doing business in this state and has full power to grant, refuse, or revoke a permit or license to any association to do business in this state when such association is not conducting its business in conformity with the laws of the state or is conducting its business in such an unsafe manner as to render its further operations hazardous to the public or any of its shareholders. All articles of incorporation and amendments thereto, all bylaws and amendments thereto, and all certificates of stock and shares of associations subject to articles 40 to 46 of this title shall be submitted to said commissioner for his approval or disapproval, and said commissioner has the authority to approve, modify, or reject any such articles of incorporation or amendments thereto, bylaws or amendments thereto, and certificates of stock or shares. The commissioner has full power and authority to prescribe all

necessary and proper rules and regulations for the conduct and operation of savings and loan associations in this state and shall prescribe the manner in which the books and records of associations doing business in this state shall be kept.

HISTORY: Source: L. 33: p. 334, § 3.CSA: C. 25, § 49.CRS 53: § 122-6-3. C.R.S. 1963: § 122-5-3.

ANNOTATION Constitutional validity not properly raised by the association. United States Bldg. Loan Ass'n v. McClelland, 95 Colo. 292, 36 P.2d 164 (1934).

### 11-44-103.5. Record retention by the commissioner

The commissioner shall retain records pursuant to part 1 of article 80 of title 24, C.R.S., and may, in his or her discretion, destroy records pursuant to said part 1.

HISTORY: Source: L. 2004: Entire section added, p. 139, § 23, effective July 1.

### 11-44-104. Commissioner may delegate powers

The commissioner may delegate such of his powers and authority to his deputies as he may deem necessary for proper administration of the division and may designate appropriate titles for his deputies and any of his employees. Any such delegation or designation made may be rescinded by the commissioner at any time. All such actions shall be in writing and of record in the files of the division. The acts of deputies performing such delegated powers and authority shall be of the same legal effect as if performed personally by the commissioner.

HISTORY: Source: L. 39: p. 250, § 21.CSA: C. 25, § 49(1).CRS 53: § 122-6-4. C.R.S. 1963: § 122-5-4.

### 11-44-105. Commissioner may institute suits

The commissioner shall report to the attorney general, and he shall institute and prosecute suits and actions to enjoin violations of articles 40 to 46 of this title or violations of orders or decisions of the commissioner rendered pursuant to said articles and to enforce any civil penalties provided by said articles. The commissioner shall notify the proper district attorney of any violation of the provisions of articles 40 to 46 of this title which constitutes a felony or misdemeanor, and such district attorney shall forthwith prosecute the person charged with such offense. Upon failure or refusal of the district attorney to so prosecute, it shall be the duty of the attorney general to conduct such prosecution.

HISTORY: Source: L. 33: p. 335, § 4.CSA: C. 25, § 50.CRS 53: § 122-6-5. C.R.S. 1963: § 122-5-5.

## 11-44-106. Issuance of subpoenas

The commissioner has the power to issue subpoenas and require attendance of any and all officers, directors, agents, salesmen, collectors, and employees of any association and such other witnesses as he may deem necessary in relation to its affairs, transactions, and conditions, and may require such witnesses to appear and answer such questions as may be put to them by the commissioner, and may require such witnesses to produce such books, papers, or documents in their possession as may be required by the commissioner. Upon application of the commissioner, any person served with a subpoena issued by him may be required, by order of the district court of the county where the association has its principal office, to appear and answer such questions as may be put to

him by the commissioner and be required to produce such books, papers, or documents in his possession as may be required by the commissioner.

HISTORY: Source: L. 33: p. 336, § 5.CSA: C. 25, § 51.CRS 53: § 122-6-6. C.R.S. 1963: § 122-5-6.

### 11-44-106.5. Suspension or removal of directors, officers, or employees

- (1) (a) The commissioner may suspend or remove any director, officer, or employee of an association who in the opinion of the commissioner has:
- (I) Violated the savings and loan association laws or a lawful regulation or order issued thereunder;
- (II) Engaged or participated in any unsafe or unsound practice in the conduct of savings and loan business;
- (III) Committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty to the association and the association has suffered or will probably suffer financial loss or other damage or the interests of account holders may be seriously prejudiced thereby; or
- (IV) Received financial gain by reason of a violation, practice, or breach of fiduciary duty that involved personal dishonesty or demonstrated a willful or continuing disregard for the safety or soundness of the association.
- (b) The commissioner may suspend or remove any director, officer, or employee of an association who, under the laws of this state, the United States, or any other state or territory of the United States:
- (I) Has entered a plea of guilty or nolo contendere to or been convicted of a crime involving theft or fraud that is classified as a felony; or
- (II) Is subject to an order removing or suspending such individual from office, or prohibiting such individual's participation in the conduct of the affairs of any credit union, savings and loan association, bank, or other financial institution.
- (1.2) A suspension or removal order issued pursuant to subsection (1) of this section shall include a description of the grounds for the suspension or removal. A copy of the order shall be sent to the association concerned and to each member of its board of directors.
- (2) (a) The commissioner shall send written notice by certified mail, return receipt requested, to any person affected by subsection (1) of this section, at least ten days prior to a hearing held pursuant to section 24-4-105, C.R.S., at which the commissioner shall preside.
- (b) If the commissioner determines that a specific case involves extraordinary circumstances which require immediate action, he may suspend or remove a person under subsection (1) of this section without notice or a hearing, but he shall conduct a hearing under section 24-4-105, C.R.S., within thirty days after such suspension or removal.
- (c) Any person who performs any duty or who exercises any power of a domestic savings and loan association after receipt of a suspension or removal order under subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.
- (d) In extraordinary circumstances, upon order of the commissioner, any hearing conducted pursuant to this section shall be exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the institution.

HISTORY: Source: L. 85: Entire section added, p. 399, § 2, effective May 24.L. 89: (1) amended and (2)(d)

added, p. 612, § § 6, 7, effective April 19.L. 94: (1) amended and (1.2) added, p. 67, § 13, effective July 1.L. 2002: (2)(c) amended, p. 1471, § 41, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(c), see section 1 of chapter 318, Session Laws of Colorado 2002.

### 11-44-107. Confidentiality

- (1) Neither the commissioner, the commissioner's deputy, or any other person appointed by the commissioner shall divulge any information acquired in the discharge of the person's duties; except that:
- (a) A person specified in the introductory portion to this subsection (1) may divulge information acquired in the discharge of the person's duties if doing so is made necessary by law or under order of court in an action involving the division of financial services or in criminal actions;
- (b) Any party entitled to appear in a hearing on an application for a savings and loan association charter or approval of a merger of savings and loan associations shall have access to the applicant's proposed articles or amended articles of incorporation, application for charter, and proposed bylaws;
- (c) The commissioner may furnish information as to the condition of a savings and loan association to the federal office of thrift supervision or its successors, a federal home loan bank, the savings and loan departments of other states, an insurer authorized to insure obligations or accounts pursuant to articles 40 to 47 of this title, the executive director of the department of regulatory agencies, or the division of banking;
- (d) The commissioner may give records or information in the commissioner's possession to a licensing agency within the department of regulatory agencies relating to possible misconduct by a person or entity licensed by said agency;
- (e) The board, the commissioner, and their respective designees may exchange information obtained by the division of financial services as to possible criminal violations of law relating to the activities of a savings and loan association with the appropriate law enforcement agencies; and
- (f) Notwithstanding any provision contained in this article to the contrary, the commissioner, the commissioner's deputies, or other persons appointed by the commissioner may disclose any information in the records of the division of financial services or acquired in the discharge of the person's duties that is available from the federal office of thrift supervision or its successors or the disclosure of which has been specifically authorized by the board of directors of the association to which such information relates. Nothing in this section shall be construed to authorize the board of directors of an association to waive any privileges that belong solely to the financial services board, the division of financial services, or its employees.

**HISTORY:** Source: L. 33: p. 336, § 6.CSA: C. 25, § 52.CRS 53: § 122-6-7. C.R.S. 1963: § 122-5-7.L. 79: Entire section amended, p. 432, § 9, effective June 19.L. 84: Entire section amended, p. 381, § 10, effective May 11.L. 85: Entire section amended, p. 400, § 3, effective May 24.L. 89: Entire section amended, p. 617, § 4, effective July 1.L. 93: Entire section amended, p. 1452, § 10, effective June 6.L. 99: Entire section amended, p. 1012, § 6, effective August 4.L. 2008: Entire section amended, p. 180, § 2, effective August 5.

## 11-44-108. Seal of commissioner (Repealed)

**HISTORY:** Source: L. 33: p. 337, § 7.CSA: C. 25, § 53.CRS 53: § 122-6-8. C.R.S. 1963: § 122-5-8.L. 89: Entire section amended, p. 618, § 5, effective July 1.L. 94: Entire section repealed, p. 68, § 14, effective July 1.

### 11-44-109. Examination by commissioner - procedure - penalty

- (1) The commissioner, in person or by his deputy or one or more of his or her employees, at such intervals as the commissioner shall determine to be necessary or desirable in order to ascertain that each association is conducting its business in a safe and authorized manner, shall visit the home office and such branch offices as the commissioner deems necessary and examine into the affairs of every domestic association doing business in this state. The commissioner's deputy or any employee of the commissioner, before being entitled to make such examination, shall produce under the hand and seal of the commissioner his or her authority to make such examination. The commissioner and his deputy have the power to administer oaths and to examine under oath any director, officer, employee, or agent of any association concerning the business and affairs thereof. If the association has neither been audited by a registered or certified public accountant, in such manner and by auditors satisfactory to the commissioner, within the twelve-month period immediately preceding the date of such examination or within the period that has elapsed since such last preceding examination, whichever is greater, nor adopted and maintained an internal audit program acceptable to the federal deposit insurance corporation or its successor and the division, the examination by the division shall include an audit. The cost, as computed by the division, of any such audit shall be paid by the association audited; except that there shall be no charge by the division for making an audit when such audit has been made by reason of collaboration as provided in section 11-41-117.
- (1.5) In lieu of making his or her own examination, the commissioner may accept the examination report prepared by the federal office of thrift supervision or its successor or other appropriate regulatory authority.
- (2) When, in the judgment of the commissioner, the condition of any association renders it necessary or expedient to make an extra examination or to devote any such extraordinary attention to its affairs, the commissioner has authority to make any extra examinations and to devote any necessary extra attention to the conduct of its affairs and may cause a registered or certified public accountant, appointed by the commissioner, to make an audit or examination of such association's business and affairs. In any such case, the association shall pay a reasonable fee based on actual cost to be affixed by the commissioner for all such extra services rendered by the division or by such accountant. A copy of the commissioner's report on each examination must be furnished to the association examined, and each director must note thereon that he has read the same.
- (3) The commissioner or his deputy shall annually examine into the affairs of every foreign association doing business in this state, and for every such examination made outside this state a reasonable expense and the actual traveling expenses incurred shall be paid by the association so examined. If the commissioner deems it necessary, he may cause a public accountant, appointed by the commissioner, to make an audit or examination of such association's business and affairs, and, in any such case, such association shall pay a reasonable price to be fixed by the commissioner for such extra services rendered by such accountant. Should any foreign association fail to pay the costs incurred in any such examination, such costs shall be paid by the state treasurer upon the order of the commissioner, and the amount so paid shall be a first lien upon all the assets and property of such association and may be recovered by suit by the attorney general on behalf of the state of Colorado and restored to the fund from which paid.
- (4) For the purpose of the examinations provided for in this section, the commissioner and his deputy or any other person authorized by him to make the examination has free access to all books and papers of the association which relate to its business and to the books and papers kept by any officer, agent, or employee relating thereto or upon which any record of its business is kept and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of any such association or any other person in relation to its affairs, transactions, and conditions. He may require and compel the production of records, books, papers, contracts, or other documents by court action if necessary.
- (5) Any person who knowingly or willfully testifies falsely in reference to any matter material to said examination is guilty of perjury in the second degree and, upon conviction thereof, shall be punished accordingly; and any person who willfully refuses or fails to attend, answer, or produce books or papers, or who refuses to give said commissioner or his deputy or the person authorized by him full and truthful information and answer in writing to

any inquiry or question made in writing by said commissioner or deputy or the person authorized by him in regard to the business carried on by such association or other matters under investigation, or who refuses or willfully fails to appear and testify under oath before the commissioner, his deputy, or the person authorized by him is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

(6) Any director, officer, agent, or employee of any association who knowingly or willfully makes any false certificate, entry, or memorandum upon any of the books or the papers of any association or upon any statement filed or offered to be filed in the division of financial services of this state or used in the course of any examination, inquiry, or investigation, with the intent to deceive the commissioner, his deputy, or any person employed or appointed by him to make such examination, inquiry, or investigation, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not less than two months nor more than twelve months, or by both such fine and imprisonment.

**HISTORY:** Source: L. 33: p. 337, § 8.CSA: C. 25, § 54.L. 39: p. 250, § 22.CRS 53: § 122-6-9.L. 55: p. 765, § 1.L. 57: p. 650, § 2. C.R.S. 1963: § 122-5-9.L. 69: p. 1021, § 1.L. 71: p. 1147, § 5.L. 72: p. 567, § 44.L. 84: (1) amended and (1.5) added, p. 381, § 11, effective May 11.L. 89: (6) amended, p. 618, § 6, effective July 1.L. 2004: (1) and (1.5) amended, pp. 151, 140, § § 60, 24, effective July 1.

### 11-44-110. Power to take possession of association

- (1) If the commissioner, as the result of any examination or from any report made to him, finds that any association doing business in this state is violating the provisions of its articles of incorporation or bylaws or of the laws of this state provided for its government or is conducting its business in an unsafe or unauthorized manner, by an order addressed to such association, he may direct a discontinuance of such violations or unsafe or unauthorized practices and a conformity with all the requirements of law.
- (2) If such association refuses or neglects to comply with such order within the time specified therein, or if it appears to the commissioner that any association is in an unsafe condition or is conducting its business in an unsafe manner such as to render its further proceedings hazardous to the public or to any of its members, or if he finds that its assets are impaired to such an extent that it threatens loss to the withdrawable shares, or if any association refuses to submit its books, papers, and accounts to the inspection of the commissioner or any of his examiners, his deputy, or his assistants, or if any officer refuses to be examined upon oath concerning the affairs of such association, then the commissioner may revoke the certificate of authority of such association, which shall act as an injunction against the association issuing any new shares or stock, making any new loans, transferring any shares or stock, or making any change in its managerial or directorial personnel during the time such revocation is in effect.
- (3) The commissioner may, with the written approval of the board, take possession of the property, business, and assets of such an association and retain such possession until such association, with the consent of the commissioner, resumes business or until its affairs are liquidated. Such association, with the consent of the commissioner, may resume business upon such conditions as may be prescribed by the commissioner, but such savings and loan association shall pay all the expenses of the commissioner and the commissioner's deputy and employees in so taking possession of its property and assets.
- (4) (a) In addition to all other powers to take possession of any association, the commissioner may appoint himself or herself or a third party as conservator of any association and immediately take possession and control of the business and assets of the association if the commissioner determines that:
- (I) Such action is necessary to conserve the assets of the association or to protect the interests of its shareholders from acts or omissions of the existing management;

- (II) The association, by a resolution of its board of directors, consents to such action;
- (III) There is a willful violation of a cease-and-desist order that results in the association being operated in an unsafe or unsound manner; or
- (IV) The association is significantly undercapitalized and has no reasonable prospect of becoming adequately capitalized.
- (b) The commissioner may appoint a conservator and take immediate possession of the association without prior notice or a hearing; except that, within ten days after the conservator is appointed, the association may file an appeal with the board requesting the board to rescind the commissioner's appointment of a conservator. Upon receipt of a timely appeal, the board shall set a date for hearing and determine whether the commissioner's appointment should be rescinded; except that such appeal shall not act as a stay of the commissioner's action. If the board finds the commissioner's action was unauthorized, the board shall restore control of the association to its board of directors. If no appeal is filed within ten days after the commissioner's appointment of a conservator, all action taken by the commissioner shall be final.
- (c) In extraordinary circumstances, upon order of the board, any hearing conducted pursuant to this subsection (4) shall be exempt from any provision of law requiring that proceedings of the board be conducted publicly. Such extraordinary circumstances occur only when specific concern arises about prompt withdrawal of moneys from the association.
- (d) The conservator shall have all the powers of the shareholders, directors, and officers of the association and shall be authorized to operate the association in its own name or to conserve its assets as directed by the commissioner. The conservator shall conduct the business of the association and make regular reports to the commissioner until such time as the commissioner has determined that the purposes of conservatorship have been accomplished and the association should be returned to the control of its board of directors. All costs incident to the conservatorship shall be paid out of the assets of the association. If the commissioner determines that the purposes of the conservatorship will not be accomplished, the commissioner may proceed with the involuntary liquidation of the association in the manner described in subsections (2) and (3) of this section.
- (e) If a conservator is appointed, and is other than the federal deposit insurance corporation, the office of thrift supervision or its successors, or an employee of the division of financial services, the conservator and any assistants shall provide a bond, payable to the association and executed by a surety company authorized to do business in this state, which meets with the approval of the financial services board, for the faithful discharge of their duties in connection with such conservatorship and the accounting for all moneys coming into their hands. The cost of such bond shall be paid from the assets of the association. Suit may be maintained on such bond by any person injured by a breach of the conditions thereof. This requirement may be deemed met if the financial services board determines that the association's fidelity bond covers the conservator and any assistants.

**HISTORY:** Source: L. 33: p. 340, § 9.CSA: C. 25, § 55.CRS 53: § 122-6-10. C.R.S. 1963: § 122-5-10.L. 99: (3) amended and (4) added, p. 1012, § 7, effective August 4.

#### ANNOTATION

The taking over of a building and loan association is free from constitutional objections, for building and loan associations are purely creatures of statute. United States Bldg. Loan Ass'n v. McClelland, 95 Colo. 292, 36 P.2d 164 (1934).

## 11-44-110.5. Supervisory mergers

As a condition to allowing an association to resume business, the commissioner may require the association to merge with a domestic, foreign, or federal savings and loan association. In the case of such a supervisory merger

initiated by the commissioner or the federal deposit insurance corporation or its successor, the provisions of section 11-43-101 shall not apply.

**HISTORY:** Source: L. 82: Entire section added, p. 246, § 1, effective March 25.L. 2004: Entire section amended, p. 152, § 61, effective July 1.

### 11-44-111. Appeal from commissioner's action

When any association, of whose property, business, and assets the commissioner has taken possession, deems itself aggrieved thereby, it may appeal to the financial services board pursuant to section 11-44-101.8 and receive expedited consideration as soon as practicable, and if it has, within ten days after the commissioner took possession, served written notice on the commissioner of its intention to seek to enjoin in court the commissioner's further proceedings, it may apply at any time within thirty days after such taking possession to the district court of the county in which the principal office of the association is located to enjoin further proceedings. After citing the commissioner to show cause why further proceedings should not be enjoined and hearing the evidence of the parties and determining the facts, the court may, upon the merits, dismiss such application or enjoin the commissioner from further proceedings and direct the commissioner to surrender such business, property, and assets to such association. An appeal from such judgment shall operate as a stay from the commissioner's taking possession, and no bond need be given if such appeal is taken by the commissioner; but, if such appeal is taken by such association, a bond shall be given as required by the court.

**HISTORY:** Source: L. 33: p. 341, § 10.CSA: C. 25, § 56.CRS 53: § 122-6-11. C.R.S. 1963: § 122-5-11.L. 93: Entire section amended, p. 1452, § 11, effective June 6.

#### **ANNOTATION**

The parties have, under this section, a right to a plenary judicial review of the actions of the commissioner. United States Bldg. Loan Ass'n v. McClelland, 6 F. Supp. 299 (D. Colo. 1934).

# 11-44-112. Appointment of commissioner as receiver - assignment for benefit of creditors prohibited

Upon application to the district court, the commissioner may be appointed the receiver to operate a savings and loan association when such appointment is necessary to avoid the association's assets becoming impaired or when the association is operating in an unsafe manner. In lieu of the commissioner being appointed a receiver or liquidator, the federal deposit insurance corporation or its successor, or an insurer authorized to insure obligations or accounts pursuant to articles 40 to 47.5 of this title, may be tendered an appointment as receiver or liquidator. For the purposes of rule 98 of the Colorado rules of civil procedure, venue of the commissioner is in the city and county of Denver. No savings and loan association shall make an assignment for the benefit of creditors.

**HISTORY:** Source: L. 33: p. 342, § 11.CSA: C. 25, § 57.CRS 53: § 122-6-12. C.R.S. 1963: § 122-5-12.L. 82: Entire section amended, p. 246, § 2, effective March 25.L. 84: Entire section amended, p. 382, § 12, effective May 11.L. 2004: Entire section amended, p. 152, § 62, effective July 1.

#### 11-44-113. Procedure under court order

(1) The commissioner may retain possession of any savings and loan association for the purpose of liquidating its

affairs, but before doing so he shall furnish a bond, executed by some surety company authorized to do business in this state and running to the people of the state of Colorado, in a penal sum equal to the value of the negotiable assets of the association, as nearly as may be determined, for the faithful discharge of his duties in connection with liquidating the affairs of the association and accounting for all moneys coming into his hands. Such bond shall be approved by the governor and be filed in the office of the secretary of state. The cost of such bond shall be paid from the assets of the association. Suits may be maintained on such bond by any person injured by a breach of the conditions thereof.

- (2) Upon taking such possession, the commissioner shall have authority to collect all moneys due to such association, and to give full receipt therefor, and to do such other acts as are necessary or expedient to collect, conserve, or protect its business, property, and assets.
- (3) If the commissioner is in possession of the business, property, and assets of any association, regardless of whether or not he is liquidating the affairs of such association, the commissioner, in his discretion, may apply to the district court of the county in which the principal office in this state of such association is located for an order confirming any action taken by the commissioner or authorizing the commissioner to do any act or to execute any instrument not expressly authorized by articles 40 to 46 of this title, which order shall be made after a hearing, on such notice as the court shall prescribe. He may pay and discharge any secured claims against such association, and, within six months after taking such possession, he may disaffirm any executory contracts, including leases, to which such association is a party and disaffirm any partially executed contracts, including leases, to the extent that they remain executory.

HISTORY: Source: L. 33: p. 342, § 12.CSA: C. 25, § 58.CRS 53: § 122-6-13. C.R.S. 1963: § 122-5-13.

### 11-44-114. Noncompliance with orders - penalty

If the commissioner demands possession of the property, business, and assets of any association, pursuant to section 11-44-110, the refusal of any officer, agent, employee, or director of such association to comply with such demand shall constitute a misdemeanor, punishable by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment; and, if such demand is not complied with within twenty-four hours after service, the commissioner may call to his assistance the sheriff of the county in which the principal place of business of such association is located, by written demand under his hand and official seal; whereupon it shall become the duty of such official to enforce the demands of the commissioner.

HISTORY: Source: L. 33: p. 343, § 13.CSA: C. 25, § 59.CRS 53: § 122-6-14. C.R.S. 1963: § 122-5-14.

### 11-44-115. Officers to furnish schedule of property

Upon taking possession of the property, business, and assets of any association, the commissioner shall require the president and secretary of such association to make a schedule of all its property and assets and of all collateral held by it as security for loans, and to make oath that such schedule sets forth all such property, assets, and collateral which such association owns or to which it is entitled, and to deliver such schedule and the possession of all such property and collateral as may not have been so previously delivered to the commissioner, who may examine under oath such president and secretary, the other officers of such association, or the directors, agents, or employees thereof at any time to determine whether or not all the property, assets, and collateral which such association owns or to which it is entitled have been transferred and delivered into his possession.

HISTORY: Source: L. 33: p. 344, § 14.CSA: C. 25, § 60.CRS 53: § 122-6-15. C.R.S. 1963: § 122-5-15.

### 11-44-116. Liquidation powers of commissioner

- (1) In liquidating the affairs of an association, the commissioner has the power to collect all moneys due to and all claims of such association and give full receipt therefor; to release or reconvey all real or personal property pledged, hypothecated, or transferred in trust as security for loans; to approve and pay all just and equitable claims; to commence and prosecute all actions and proceedings necessary to enforce liquidations; to compound bad or doubtful debts and to compound and settle with any debtor or creditor of such association or with the persons having possession of its property or being in any way responsible at law or in equity to such association, upon such terms and conditions and in such manner as he deems just and beneficial to such association; in case of mutual dealings between the association and any person, to allow just setoffs in favor of such persons in all cases in which the same ought to be allowed according to law and equity; in case of borrowers holding shares of the association pledged to the association as security for said loan, to allow the amount paid in on said shares, together with all dividends legally declared thereon, to be set off against the amount due on said loan; and to sell, convey, and transfer real and personal property.
- (2) If a purchaser for any bad or doubtful debts cannot be obtained and it appears improbable that recovery thereon can be had and that the costs of actions to enforce collections of the same would probably be lost, the court may direct that suits thereon need not be brought.
- (3) For the purpose of executing and performing any of the powers and duties conferred upon him, the commissioner, in the name of such association or in his own name, may prosecute and defend any and all suits and other legal proceedings and, in the name of such association or in his own name, as commissioner, may execute, acknowledge, and deliver any deeds, assignments, releases, and other instruments necessary and proper to effectuate any sale of real or personal property or other transaction in connection with the liquidation of such association. Any deed, assignment, release, or other instrument executed pursuant to the authority given shall be valid and effectual for all purposes as though the same had been executed by the officers of such association by authority of its board of directors.
- (4) In case any of the real property so sold is located in a county other than the county in which the application to the court for leave to sell the same is made, the commissioner shall cause a certified copy of the order authorizing or ratifying such sale to be filed in the office of the recorder of the county in which such real property is located.
- (5) Upon determining to liquidate an association, the commissioner shall cause an inventory of all the assets of such association to be made in duplicate, the original to be filed with the court and the duplicate in the office of the commissioner. He shall cause due notice to be given, by publication once a week for four successive weeks in some newspaper of general circulation published at or near the principal place of business of such association in this state, to all persons having claims against it as creditors, or investors, or otherwise, to present and file same and make legal proof thereof at a place and within a time to be designated in such publication, which time shall be not less than two months after such first publication. Within ten days after such first publication, he shall cause a copy of such notice to be mailed to all persons whose names appear of record upon its books as creditors or investors, and, upon the expiration of the time fixed for the presentation of claims, the commissioner shall prepare or cause to be prepared in duplicate a full and complete schedule of all claims presented, specifying by classes those that have been approved and those that have been disapproved, and shall file the original with the court and the duplicate in the office of the commissioner. Not later than five days after the time of filing such schedule with the court, written notice shall be mailed to all claimants whose claims have been rejected.
- (6) Action to enforce the payment of any rejected claim must be brought and service had within four months after the date of filing of the schedule of claims with the proper court; otherwise all such actions shall be forever barred. All claims of creditors, investors, or other persons against the association or against any property owned or held by it must be presented to the commissioner in writing, verified by the claimant or someone in his behalf, within the period limited in the notice mentioned in subsection (5) of this section for the presentation of claims; and any claims not so presented shall be forever barred; but the claim of any investor, appearing upon the books of the association as a valid claim, presented after the expiration of the time fixed in said notice shall be entitled to share in any dividends declared subsequent to the presentation of such claim.
- (7) The commissioner under his hand and official seal may appoint one or more special deputies to assist in the

duties of liquidation and distribution under his direction and may also employ such special legal counsel, accountants, and assistants as may be needful and requisite and fix the salaries and compensation to be allowed and paid to each, all to be in a reasonable and commensurate sum. All such salaries and compensation and such other reasonable and necessary expenses as may be incurred in the liquidation shall be paid by the commissioner from the funds of such association in his hands.

- (8) From the net realization of such assets in excess of such salaries, compensation, and expenses, the commissioner shall first pay all approved claims other than to investors, and thereafter he shall distribute and pay dividends in liquidation to the shareholders and investors in the association, other than holders of permanent stock, until their claims are fully paid or such assets or funds are exhausted. Such distributions shall be made as funds are available therefor, to the extent of ten percent or more of the approved claims of the class of claimants then entitled to distribution, and shall continue until all the assets have been realized upon and a final dividend in liquidation is declared and paid.
- (9) Upon the payment of a final dividend in liquidation, the commissioner shall prepare and file with the court a full and final statement of the liquidation, including a summary of the receipts and disbursements, and a duplicate thereof shall be filed in the office of the commissioner, and, after due hearing and approval by the court, the liquidation shall be deemed to be closed.
- (10) The determination by the commissioner to liquidate any association, evidenced by filing written notice of such determination with the court, shall operate to stay or dissolve any actions or attachments instituted or levied within thirty days next preceding the taking of possession of such association by the commissioner, and, pending the process of liquidation, no attachment or execution shall be levied nor lien created upon any of the property of such association.
- (11) Whenever, in case of any association which has issued permanent stock, the commissioner has fully liquidated all claims other than claims of such stockholders, and has made due provision for any and all known or unclaimed liabilities, excepting claims of permanent stockholders, and has paid all expenses of liquidation, he shall call a meeting of the stockholders of said savings and loan association by giving notice thereof for thirty days in one or more newspapers published in the county in which the principal office of the association is located. At such meeting the commissioner shall deliver to such stockholders all the property and effects of said association remaining in his possession, except its records, which shall be retained by him as part of the records of his office, and, upon such transfer and delivery, he shall be discharged from any and all further liability to said association or its creditors, and thereupon the association shall be in the same position as though it had never been authorized to transact a savings and loan business.

HISTORY: Source: L. 33: p. 344, § 15.CSA: C. 25, § 61.CRS 53: § 122-6-16. C.R.S. 1963: § 122-5-16.

#### 11-44-117. Setoffs

Credits on loan shares of all persons indebted to any savings and loan association in the possession of the commissioner, whether such indebtedness is due or to become due, shall be applied by him on account of such indebtedness.

HISTORY: Source: L. 33: p. 349, § 16.CSA: C. 25, § 62.CRS 53: § 122-6-17. C.R.S. 1963: § 122-5-17.

## 11-44-118. Commissioner and deputy not to accept gifts

Neither the commissioner nor his deputy shall receive or accept any bribe, gratuity, or reward from any person or association for any purpose whatever or knowingly and willfully make any false or fraudulent report of the condition of any association for any purpose whatsoever. One or more of the directors of any association may be present at any examination of the affairs thereof, but the absence of any or all of the officers or directors shall not operate to prevent the commissioner or his deputy from proceeding with such examination.

HISTORY: Source: L. 33: p. 349, § 17.CSA: C. 25, § 63.CRS 53: § 122-6-18. C.R.S. 1963: § 122-5-18.

#### 11-44-119. Association's right to resort to court

Nothing in articles 40 to 46 of this title shall be construed to prevent an association or person affected by any order, ruling, proceeding, act, or action of the commissioner or the financial services board or any person acting on behalf and at the instance of the commissioner or the financial services board, or both, from testing the validity of the same in any court of competent jurisdiction, through injunction, appeal, or other proper process or proceeding, mandatory or otherwise.

**HISTORY:** Source: L. 33: p. 350, § 18.CSA: C. 25, § 64.CRS 53: § 122-6-19. C.R.S. 1963: § 122-5-19.L. 93: Entire section amended, p. 1453, § 12, effective June 6.

#### **ANNOTATION**

Section helps insure speedy judicial hearing. This section, together with § § 11-41-111, 11-41-113, and 11-41-116, supplies all reasonably proper means of obtaining speedy judicial hearings on all vital issues that could properly be raised. United States Bldg. Loan Ass'n v. McClelland, 95 Colo. 292, 36 P.2d 164 (1934).

For the parties have, under this section, a right to a plenary judicial review of the actions of the commissioner. United States Bldg. Loan Ass'n v. McClelland, 6 F. Supp. 299 (D. Colo. 1934).

#### 11-44-120. Records of commissioner

- (1) The commissioner shall maintain annually revised summaries disclosing the names of the officers and directors of all savings and loan associations doing business in the state of Colorado during the preceding year, the financial condition of such savings and loan associations, together with a statement of the assets, liabilities, and reserves of the associations, and such other information concerning the same as he may see fit.
- (2) These data and any other material circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.
- (3) Repealed.

**HISTORY:** Source: L. 33: p. 350, § 19.CSA: C. 25, § 65.L. 39: p. 251, § 23.CRS 53: § 122-6-20.L. 64: p. 169, § 133. C.R.S. 1963: § 122-5-20.L. 83: (2) and (3) amended, p. 827, § 9, effective July 1.L. 96: (3) repealed, p. 1231, § 55, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (3), see section 1 of chapter 237, Session Laws of Colorado 1996.

## 11-44-121. Commissioner may destroy records. (Repealed)

**HISTORY:** Source: L. 55: p. 764, § 11.CRS 53: § 122-6-21. C.R.S. 1963: § 122-5-21.L. 2004: Entire section repealed, p. 140, § 25, effective July 1.

## 11-44-122. Waiver of membership or stockholder voting

Notwithstanding any other provision of state law, whenever the commissioner finds that it is necessary to effect a merger, consolidation, purchase and assumption agreement, conversion to stock association, conversion to mutual association, conversion to federal association, or conversion to state association or other action, as a result of the assets of any association being impaired to the extent that it threatens loss to the withdrawable shares or the association being in an unsafe condition and the time required to give proper notice and hold a meeting to vote on the action is deemed by the commissioner to increase the threat of loss to the withdrawable shares, the commissioner may waive the requirement of a membership or stockholder vote on the action. There shall be no requirement of prior written notice to the affected parties of said waiver.

HISTORY: Source: L. 82: Entire section added, p. 247, § 3, effective March 25.

# 11-44-123 (2013), TITLE 11. FINANCIAL INSTITUTIONS, SAVINGS AND LOAN ASSOCIATIONS,

ARTICLE 44. DIVISION OF FINANCIAL SERVICES, 11-44-123.

Assessment of civil money penalties, COLORADO REVISED STATUTES